

COUNCIL MEETING

AUGUST 3, 2016

The Council Meeting of the Council of the County of Kaua'i was called to order by Council Chair Mel Rapozo at the Council Chambers, 4396 Rice Street, Suite 201, Līhu'e, Kaua'i, on Wednesday, August 3, 2016 at 8:32 a.m., after which the following Members answered the call of the roll:

Honorable Mason K. Chock (*present at 11:26 a.m.*)
Honorable Gary L. Hooser
Honorable Ross Kagawa
Honorable Arryl Kaneshiro
Honorable KipuKai Kuali'i
Honorable JoAnn A. Yukimura (*present at 8:36 a.m.*)
Honorable Mel Rapozo

APPROVAL OF AGENDA.

Councilmember Kuali'i moved for approval of the agenda as circulated, seconded by Councilmember Kaneshiro.

Council Chair Rapozo: Is there any discussion or public testimony?

There being no objections, the rules were suspended to take public testimony.

There being no one present to provide testimony, the meeting was called back to order, and proceeded as follows:

Council Chair Rapozo: Just for everyone's information, we have an Executive Session that we will take at 1:30 p.m. That is the only time specific item.

The motion to approve the agenda as circulated was then put, and carried by a vote of 5:0:2 (*Councilmembers Chock and Yukimura were excused*).

MINUTES of the following meeting of the Council:

July 6, 2016 Council Meeting

Councilmember Kaneshiro moved to approve the Minutes as circulated, seconded by Councilmember Kuali'i, and carried by a vote of 5:0:2 (*Councilmembers Chock and Yukimura were excused*).

JADE K. FOUNTAIN-TANIGAWA, County Clerk: Council Chair, there are two (2) Special Order items of the day.

SPECIAL ORDER OF THE DAY:

C 2016-162 Communication (07/08/2016) from the County Attorney, requesting authorization to expend additional funds up to \$30,000.00 for Special Counsel's continued representation of Bernard P. Carvalho, Jr., in his official capacity as the Mayor of the County of Kaua'i, in Kaua'i Police Commission, et al. vs. Bernard P. Carvalho, Jr., in his official capacity as the Mayor of the County of Kaua'i, Civil No. 12-1-0229 (Fifth Circuit Court); CAAP NOS. CAAP-12-0001123 & 13-0000015 (Hawai'i Supreme Court, Intermediate Court of Appeals), and related matters: Councilmember Kagawa moved to receive C 2016-162 for the record, seconded by Councilmember Kualii'i.

Council Chair Rapozo: Any discussion?

Councilmember Kagawa: Yes.

Council Chair Rapozo: Councilmember Kagawa.

Councilmember Kagawa: Previous Councils have gone over this matter and I think at some point, we have to accept the decision and stop appealing and appealing and appealing, and wasting taxpayer money to make a point on a decision that has been made. We need to accept it at some point. As a private citizen, if the Mayor wants to appeal it, I think he is free to use his own money to go and appeal it, but I do not feel that we can keep wasting money on this issue. It is clear as far as the research that I have done that it was always the intent of the Charter to follow the decision of what has been made and that the Mayor cannot fire, hire, or reprimand the Chief of Police. It has always been the Police Commission that had that right and that was specific because it relates to public safety. Thank you, Council Chair.

Council Chair Rapozo: Thank you. Is Mauna Kea around? Can somebody let him know that it is 8:36 a.m. and that it is his item, and he needs to be here? Anyone else? Councilmember Hooser.

Councilmember Hooser: I have a different viewpoint than the prior speaker and believe that we do need to settle this and it is an incredibly important issue. One court came out and said, "The Mayor was responsible for supervising," and the second court came out and said, "No, the Police Commission is responsible for supervising the Chief of Police." The issue of the management of the Police Department and all of the different people that are involved in there is a very complicated one...

(Councilmember Yukimura was noted as present.)

Councilmember Hooser: ...and I think it needs to be reconciled. Until we run the appeal through, we really will not know the definitive answer. As Councilmembers, we certainly are not in a position of supervising the Chief of Police or hiring and firing the Chief of Police, but we do have to deal with the actions of the Police Department, most of which are done in Executive Session and sometimes involves writing checks for actions that violate various rules and whatnot. We are not in the position of supervising the Chief of Police. The Police Commission is a part-time body and they are not administratively staffed to supervise the Chief of Police. They meet once a month, they are volunteers, and they are in no position to

supervise the Chief of Police on a regular basis. Now that the Mayor who is in the position, now that authority is in question, I think it is incredibly important that this be sorted out. There have been a number of issues and problems overlapping all three over the past few years. I think we need to run the appeal out. Sure, it costs money, it is an investment, but there are many problems with the management and this is not the management of the Chief of Police, but the management of the Police Department, in general. That includes all bodies. I am not focusing on the Police Department or the Chief of Police. I am talking about the Police Commission itself and the Mayor's relationship with them. This is very important. There have been many problems and issues, multiple actions with the Equal Employment Opportunity Commission (EEOC) and allegations of discrimination and retaliation since I have been here on the Council. When asked the question, "Who is in charge?" The answer is, "It does not seem like anybody is in charged." We need to get to the bottom of this and ultimately, I believe we need to look at the Charter and see what charter amendments need to be made to clarify this, but we need to start with following this through to the end and supporting an appeal. Thank you.

Council Chair Rapozo: Thank you. Any other discussion before I suspend the rules? I have a question for Mauna Kea and then we do have someone who has signed up to speak.

There being no objections, the rules were suspended.

Council Chair Rapozo: Why is C 2016-162 for thirty thousand dollars (\$30,000) and C 2016-163 for fifteen thousand dollars (\$15,000)?

MAUNA KEA TRASK, County Attorney: Could you repeat that?

Council Chair Rapozo: The request for funding for the representation of the Mayor is thirty thousand dollars (\$30,000) and the Police Commission's request is fifteen thousand dollars (\$15,000). Why is the Mayor's request double of what Police Commission's request is?

Mr. Trask: Thank you. For the record, Mauna Kea Trask, County Attorney. I called both Special Counsels independently and asked them what would be their anticipated need assuming the total completion of the case. Therefore, assuming the Supreme Court accepts the writ, requires briefing, requires response of briefing, schedules oral argument, and oral argument is had. They both gave me the respective numbers. Mr. Fuji said thirty thousand dollars (\$30,000) and Ms. Chang said fifteen thousand dollars (\$15,000). I did not inform the other of the other request. It seemed improper to me. I wanted to speak with them individually so they would not have the numbers or say, "Oh, if they are asking for this much, I will take that much." The difference is because the Mayor in this case, as the appellant, would be in the moving position and so the Mayor's attorney would have to prepare the writ and any reply to objections to the writ, opening briefing, if requested, and answer brief and/or as the Police Commission's Attorney would be in the responsive position. Generally, the moving position would have more to do.

Council Chair Rapozo: What is Mr. Fuji's hourly rate?

Mr. Trask: Mr. Fuji's hourly rate is more.

Council Chair Rapozo: Yes, what is that number?

Mr. Trask: I will grab my folder. I believe the information was provided and under the contract, it is three hundred dollars (\$300) per hour for partners, one hundred ninety dollars (\$190) for associates, and seventy-five dollars (\$75) for paralegal.

Council Chair Rapozo: And Ms. Chang?

Mr. Trask: Ms. Chang is somewhere around two hundred dollars (\$200) per hour, but Mr. Morimoto provided that to you; therefore, I do not have a copy of that memorandum.

Council Chair Rapozo: Okay.

Mr. Trask: That was the result of independent procurement processes selection, et cetera.

Council Chair Rapozo: Yes, I understand. One last question and you may not know the answer to this, but when was the last time did the Mayor utilize his Chief Executive Officer (CEO) authority and disciplined any County employee? Which is what the State Judge said. He is the CEO and he can discipline anybody in the County. Has he ever exercised that authority as a CEO to discipline? If you do not know, that is fine.

Mr. Trask: In 2001, Mayor Maryanne Kusaka...

Council Chair Rapozo: No, the current Mayor.

Mr. Trask: I do not know, but in 2001, Mayor Maryanne Kusaka placed Chief of Police Freitas on administrative leave for one hundred twenty (120) days. I do not know. It depends because this is a Commission employee, et cetera, but this similar situation has been taken before by a mayor of this County against a chief of police on this County under the authority of...or who was a commission appointee in this County.

Council Chair Rapozo: Was that case litigated at all?

Mr. Trask: Chief of Police Freitas case?

Council Chair Rapozo: Yes.

Mr. Trask: No, it was not. According to the *Honolulu Advertiser* dated Friday, August 17, 2001, it says, "(Inaudible) was in response unanimous request by Kaua'i Police Commission." I am just speculating, but it appears from the story that the Police Commission requested Mayor Kusaka to take that action, which can be interpreted as an indication that they felt that the Mayor had the authority. I want to mention one more thing about this because I think the question is being framed too broadly. If you look at, does the question being asked in the briefs and it has been discussed is, does the Mayor have overall authority to suspend and discipline? However, if you look at the facts as presented and I want to cite from the briefs because this is what was discussed in court. It states, "On or about February 2nd," and this is from the Police Commission's brief, "Kaua'i Police Chief Darryl D. Perry was suspended for seven (7) day's worth by the Mayor because of an ongoing investigation stemming from a complaint filed against high ranking officials within the Kaua'i Police Department by an officer employed at police headquarters." This statement was supported by the declaration of, at that time, Chair Ernest

Kanekoa, Jr., of the Police Commission. If you look at the decision by the Intermediate Court of Appeals (ICA), on page 10, they discussed the Charter and the provisions related to the Chief of Police and the Police Commission. In their opinion, they bold certain areas of the Charter, which they find relevant and they discussed. What I thought was interesting in looking at this is that under Section 11.03 it says, the Police Commission shall generally adopt rules that they may consider necessary for the conduct of its business; review the annual budget prepared by the Chief and make recommendations to the Mayor; receive, consider, and investigate charges brought by the public against the conduct of the department of any of its members. D. Refer all matters relating to administration of the department to the Chief of Police. E. Adopt such rules to regulate political activities of the members of the police department. I think the issue therefore is framed too broadly because what you have here was an internal complaint. It looks like by the Charter, I do not know if ICA missed this or what, but I think they did. This would have been referred to the Chief of Police, so I do not know how, according to the briefs, this came out of an internal dispute; a complaint filed against the Chief of Police. I do not know how the Police Commission could have addressed this because it would have been administrative. I think that is the specific question, does the Mayor have power to take action involving a personnel dispute, administrative within the department, where it looks like under the Charter, the Commission cannot act? That is the appropriate question. Again, we are talking about general practicality issues; we are talking about personnel type of things, which is what, I think, is relevant in looking at this. I have also reviewed all the exhibits that were attached to the Commission's motion regarding exerts from Charter Review Commission back from 1965 up until 1967 and it looks like they discussed appointing and firing, there is no mention of suspension or discipline. There are many broad discussions about even the utility of administrative boards and commissions versus policy boards and commissions. The trend at that time was for a responsible government answerable to the people, and they found that administrative boards with administrative authority did not remove politics. It actually created their own little political issues, which relates to all these questions, I guess.

Council Chair Rapozo: As far as 2001, it is a completely different scenario. The Commission unanimously supported that administrative leave and I do not believe the Commission has the authority to sign the personnel form to put anybody on administrative leave. The Human Resources (HR) forms would have to go to the Administration. Anyway, this is not the place to argue the case. By the way, Corlis Chang is three hundred twenty dollars (\$320) an hour.

Mr. Trask: Thank you.

Council Chair Rapozo: That is significant. Any other questions for Mauna Kea? Again, I do not want to debate the case, that is going to be done at the court, but if you have any questions as far as the process going forward... Councilmember Yukimura.

Councilmember Yukimura: I do appreciate you raising some of the issues in the case because if we do not vote for this, they are not going to be litigated in court. It is not going to the highest court in the State and I think you have actually, for me anyway, outlined many of the issues that still remain unresolved. Is it not true that this will not be resolved unless we appeal or support the appeal in the ultimate decision by the Supreme Court?

Mr. Trask: On those questions, first off, I want to clarify. The Charter mandates that the County Attorney represent all parts of the County. If this is not funded today, that does not mean that this case does not go to the

Supreme Court. It just means your Office of the County Attorney will be the one who has to go through with it if the Mayor decides to appeal. What I said last time at the Council Meeting was that I wanted to avoid that situation. I need to take care of the day-to-day business of this County and the Special Counsel Account is for special circumstances that necessity such employment, and I do not know what would be a more special circumstance than this. When you have two (2) County agencies, two (2) County departments taking their legal question...I do not think this is a feud, I think this is honest and a good legal question to vet and you need to go to the Courts sometimes. I do not think this is a feud. The Chief of Police is not even a party of this lawsuit and I would like to make that clear. These are two (2) high-ranking departments having a question about legality. There is precedent to show in the past that the County has taken similar action in this way. So I do not think it is nuance, novel, or out-of-the-blue either. I think it is understandable how this happened; this is a question. I do not think the Police Commission is doing something bad, I do not think the Mayor is doing anything bad, this is what happens sometimes. The reason why you have Special Counsel is to have these people represented other than our Office because we have the day-to-day things. I do think that jurisdictions are split and as the court has said, both sides make reasonable arguments and the case law is not clear. That is an invitation, to me to, take it to the Supreme Court. That is the finality. In a question like this, which not only affects our County and all appointed commissions; including Planning, HR, Liquor, Fire, and Police, it affects every other county jurisdiction and state boards. If this goes up to appeal, it is likely you will see either state and/or county amicus briefs on perhaps both sides. It is a big question and Kaua'i asks the hard, legal questions as we have seen. I think it deserves a Supreme Court decision.

Council Chair Rapozo: Any other questions for Mr. Trask?
Councilmember Kagawa.

Councilmember Kagawa: Mr. Trask if we go to the Supreme Court and the appeal decision comes out the same way that it has come out now, would it be "looked at" as a waste of money?

Mr. Trask: I do not think so because it was worth the question. I think the questions need to be answered. I do not think that any Supreme Court case is a waste of money because it provides clarity and more importantly, it provides finality. It also allows the legislative body's both the county and state and even the people to say, "Okay, if this is what this means, then maybe we want to change it," but they will know why, how, and what questions to do that. That is kind of the process. That is how the court appropriately fits in this structure.

Councilmember Kagawa: Is every decision that the court makes always left unopen as to who is right unless we go all the way to the highest court or is it financially feasible to at some point accept a ruling and just move on? I am talking about every case you can think about; private citizen, government...is the court system meant to always go to the Supreme Court to feel better about the initial decision? We do not have unlimited funds.

Mr. Trask: I think absolutely not.

Councilmember Kagawa: That is my question.

Mr. Trask: But in this case, when you look at the total aggregate Special Counsel from both sides comes out to about eighty thousand dollars (\$80,000), you are questioning the fundamental structure of the Charter, and the

courts are interpreting something that was wrote back in the 1960s. I think it is deserving. This County has put way more money, hundreds of thousands of dollars into other cases, which in my own personal, professional view are not as worthy to ask or not as worth to seek. But even those situations did not involve intra-county disputes and this is a question and if they cannot via agreement or whatever, come to those terms, that is why the courts exist. I think in this overall "No," but in this special case, "Yes." Considering the degree of question and the amount, it is relatively inexpensive and we have the money to take this to finality.

Councilmember Kagawa: I understand. Did any other mayor in the history of Kaua'i try to reprimand or fire the Chief of Police?

Mr. Trask: Again, I know Mayor Kusaka in 2001 put Chief of Police Freitas on administrative leave for one hundred twenty (120) days or four (4) months versus seven (7) days in this case.

Councilmember Kagawa: Was the County Attorney ever asked the question who is right? Did the Commission accept Mayor Kusaka's decision?

Mr. Trask: The Commission actually asked Mayor Kusaka to do it, which I think was an acknowledgment...

Councilmember Kagawa: That is the big difference.

Mr. Trask: At that time, it was an acknowledgement of her authority. That is the thing too. We are really looking at personalities. The Chief of Police is a great person, the Mayor is a great person, and people have their opinions about them, but what we really need to do is look at the letter of the law because we have to keep it that way otherwise how the law is interpreted changes. For instance, if this was okay in 2001, but it is not okay now, to me that is personality-based. We need to stick by the word or we are going astray.

Councilmember Kagawa: Mr. Trask, can you clarify? The statement that you just made is very different from what happened when Mayor Carvalho reprimanded or suspended Chief of Police Perry. The Kusaka decision had the blessings of the Police Commission. Mayor Carvalho's decision did not have the blessing of the Police Commission. That is a very big difference.

Mr. Trask: The Charter does not say, "With the blessing of the Commission." By the Police Commission's acting...that is why I said that it "could be acknowledged" that it is because they recognized that they did not have that authority. That is why we are talking statutory construction. It is a dry, legal issue.

Council Chair Rapozo: Any other questions for the County Attorney? Thank you. With that, do we have registered speakers?

Mr. Trask: I would just like to add one more thing if I could. I know that we came here today because of an even split vote. I do not have any idea of how this vote is going today, but given the absence of Councilmember Chock, I would ask this be deferred to later today when he is present so that we could have a finality. I would like a final vote because the judgement has been filed as of last Friday, so the clock is ticking as we speak. Thank you.

Council Chair Rapozo: I will leave it up to the will of the Council. I do not know how the vote is going to go either, but it is what it is. Can I have the first registered speaker.

Ms. Fountain-Tanigawa: The first registered speaker is Glenn Mickens.

GLENN MICKENS: For the record, Glenn Mickens. Thank you, Council Chair. Thank you, BC. You have a copy of my testimony and I will read it for the viewing public. The Intermediate Court of Appeals has rendered its decision Civil No. 12-1-0029 denying the Mayor the power to fire or discipline the Chief of Police. The Mayor is evidently seeking to appeal that decision to the Hawai'i Supreme Court and asking for thirty thousand dollars (\$30,000) for the appeal, and the Chief of Police is asking for fifteen thousand dollars (\$15,000) to oppose the appeal. In my view, the great majority of our citizens believe the Intermediate Court of Appeal's decision was correct and that the Police Commission, which is empowered to hire the Chief of Police, should also be empowered to discipline or fire the Chief of Police and would not see the justification of spending another forty-five thousand dollars (\$45,000) on the case since it has already costed the taxpayers nearly one hundred thousand dollars (\$100,000) since it began in 2012. In his *A Better Kaua'i* article of July 28th, Walter Lewis factually goes into more detail about this case and I hope all of you had a chance to read it. I have a copy here. As usual, Mr. Lewis had no other thought in mind when writing this story other than analyzing our problems and trying to save our taxpayers a lot of unnecessary money.

As Council Chair Rapozo stated at our last Council Meeting, the Court has rendered its decision, and Councilmember Kagawa said the same thing, so let us accept it, move on, and refuse to spend more tax money on what amounts to an ego trip for the Mayor.

In the wisdom of those who wrote our Charter, I am sure that they said that our Police Commission has the power to hire and fire the Chief of Police and it would certainly follow that they would have the far lesser responsibility to discipline him. That is why the language is not included in the Charter. For me, the Commissions are meant to be a firewall between the Mayor and his political views and their duties to be independent or otherwise we would not need any Commission. We would let the Mayor have complete power over all affairs of operating our government. He would basically have dictatorial powers with doing that. I do not see the sense in spending more money when the court has ruled on this. I thought that Councilmember Hooser brought up a point, as Councilmember Yukimura has, there are certain areas here that may have to be done, but not taking away the powers of the Police Commission, I think is most obvious. Thank you.

Council Chair Rapozo: Thank you, Mr. Mickens. Does anyone else wish to testify on this matter? Seeing none. Please.

PAT HUNTER WILLIAMS: Pat Hunter Williams. I actually did not expect to testify on this. I am actually here for a Resolution about reduce speed signs; however, I was also concerned about the issue. I feel that it was shocking to read that approximately eight thousand dollars (\$80,000) has already been spent. I respect Mr. Trask and think he spoke so intelligently; however, from a perspective of a former Department of Education (DOE) teacher, the additional forty-five thousand dollars (\$45,000) being requested was more than my salary for a year. I think many residents feel the same way. They are just shocked about these numbers continuing to go on and on. I would suggest because I do agree that obviously there needs to be some sort

of finality. Perhaps there needs to be more clarity to either the roll of the Commission or perhaps even an addition to the Charter. That would perhaps result in less of a cost, but would in fact result in the same thing—bringing finality. I was very involved in advocating for the formation of the Fire Commission for the exact same reason, which is to ensure that it be depoliticized, which is exactly the comments made from the Police Commission. It is not seeking to offend anybody, accuse anybody, or speak poorly of anybody. It is just a matter of dollars and cents to me and perhaps the goal could be accomplished in another way that is far more economical to the County.

Council Chair Rapozo: Thank you very much. Anyone else wishing to testify? Seeing none, the meeting is called back to order.

There being no further testimony, the meeting was called back to order, and proceeded as follows:

Council Chair Rapozo: Any further discussion? Councilmember Hooser.

Councilmember Hooser: I would like to follow-up on the County Attorney's recommendation that we defer the vote until all seven (7) members are here.

Council Chair Rapozo: Okay. Let us not defer anything yet, let us have some discussion before we...

Councilmember Kagawa: I would like to vote now.

Council Chair Rapozo: Thank you, Pat, for being here today. I think the overwhelming...in fact all of the testimony I have received as a Councilmember via E-mail or from people on the street was to, "Stop the bleeding. Enough." Take the personalities out of it. Take Bernard's name out and take the Chief of Police's name out. Mr. Mickens' testimony says that it is the Chief of Police requesting the money and that is not accurate. This has nothing to do with the Chief of Police. It is about the Commission and the Mayor. Take those bodies out of it and just look at what the heck was the Charter supposed to mean. Pat, you said it best and I think your perception of the process for the Fire Commission was no different from the 1960s when they said, "We need to take the politics out of the Police Department." I really appreciate Mauna Kea because he sounds so convincing and he is right in what he says, that is one (1) perspective, but then there is a perspective of the people that has to pay the bill. If everyone thought on this island or if the majority of people thought, no, the Mayor has the right to fire the Chief of Police or discipline the Chief of Police, they would be E-mailing us saying, "Take this further. I do not think it is right. I do not think the Commission should be the one," but that has not happened. Not with me anyway. In my mind, it is clear that the public wants the Police Department depoliticized. This comes up every so often, "They are only volunteers. They are only laypeople." I mean, really? The only difference between a volunteer and us is that we are paid and they do not, but the commitment, the skill level, and the ability...because you do not get paid does not mean you are incompetent. I disagree and get offended when people say, "They are only volunteers." We have a Boards and Commissions Department that are supposed to educate, train, and so forth and if that is not happening that is their *kuleana*. My point is this, the intent as I see it and as the ICA saw it was that hey, the Mayor does not have that right and if we want to do it, we change the Charter. We have two (2) request today. One is for thirty thousand dollars (\$30,000) for the Mayor's appeal and then the Commission's attorney is saying fifteen thousand dollars (\$15,000). Why the disparity? The hourly rate for our

Commission attorney is more than the hourly rate of the Mayor's attorney and yet it is double. Why? I am going to be honest right now that attorney that is representing the Mayor, Mr. Fuji from O'ahu, has not impressed me at all over the last few years. He has not. In fact, I believe this Council in the prior County Attorney's administration said, "Do not hire that person anymore." He led us down the wrong road in other cases. Yet the attorney representing the Commission, Corlis Chang, did the appeal to ICA at no charge because she felt so strong that the contents of the Charter had been violated. I am going to suggest that we receive this, as was the motion made, and the Office of the County Attorney can represent the Mayor if the Mayor chooses to take this further. Then in the next item with the Commission Attorney Corlis Chang, because the Office of the County Attorney has brought up the fact of the China Wall and the conflict, he is going to have to segregate the office and take the entire staff out of the...so the County Attorney can represent the Mayor and I would suggest the we approve the funding for the next item where you do not have to set up China Wall anymore. You have the Office of the County Attorney representing the Mayor and the Commission will continue the representation of the Commission. Two (2) separate bodies representing two (2)...because at some point, I agree that this needs finality because I agree with the result, but there are those that disagree and think that it needs to be vetted out. I respect that position as well. I agree to put Mauna Kea's office in that position where they have to represent two (2) sides that are in the same building is difficult. I will bring up my suggestion at the next issue, but at this point, I do not see why we should approve thirty thousand dollars (\$30,000) funding, double of which what the other attorney is asking, for an attorney that I have absolute no confidence in. Any other discussion? Councilmember Yukimura.

Councilmember Yukimura: I appreciate your thinking about how this might actually get before the Supreme Court. I would like to just suspend the rules and have Mauna Kea respond to that idea.

Council Chair Rapozo: Any other discussion before I suspend the rules? If not, I will suspend the rules.

There being no objections, the rules were suspended.

Mr. Trask: Aloha, for the record, Mauna Kea Trask, County Attorney.

Councilmember Yukimura: Mr. Trask, it is my position that there needs to be a resolution and not through second-guessing of the public or even the Council, but through the court process. Council Chair has suggested another way to get this done and I wondered what your thoughts are in terms of this idea.

Mr. Trask: The request before you from the Office of the County Attorney is for both. I will leave that at that and acknowledging that this Council has plenary authority to decide whether to fund all, none, or one (1) or the other. Again, the request is for both and only because we are all people and I just really hope...I have been practicing attorney for about ten (10) or eleven (11) years right now and people have opinions about what you do, even your own family. Hawai'i Rules of Professional Conduct (HRPC) Rule 1.2 says an attorney's representation of any client is not an endorsement of the moral, legal, or any position of theirs. I think this would be difficult nonetheless, because I know the Police Commission and the Police Department appreciate me, I would like to think. I am just afraid how this will affect that, but you do have authority to make the call as you want.

Councilmember Yukimura: I have also expressed my concerns before about the particular counsel who is representing this position and actually, your brief analysis of the appeal potential makes me think that your office is quite good in thinking about this actual case because you are so in tuned with the structure of governance and the Charter. I know it will create additional hardship on the Office to be involved in such a major issue. I think we do have to count the cost of what that does to your Office's ability, but I do have concerns too about the counsel who has been representing the Mayor. Thank you.

Council Chair Rapozo: Any other questions for Mr. Trask? If not, thank you very much.

The meeting was called back to order, and proceeded as follows:

Council Chair Rapozo: Further discussion?

Councilmember Hooser: Yes, I want to reiterate I think we should have all of the members here since it is an important decision, number one. Number two, I want to reiterate that I support the County Attorney's position on funding both of these positions otherwise we put the Office of the County Attorney in an adversarial role against the Police Commission. We need finality on this. I think that the six thousand (6,000) pound gorilla in the room is politics. Several people have said, including the Chair and others in the audience that the intent was to depoliticize the Police Department and the Police Commission. I think anyone who pays attention to the politics knows that the Chair of the Police Commission is actively campaigning for the four (4) Councilmembers here and actively campaigning against this Councilmember here who is the chair of the Public Safety Committee. This is the Chair of the Police Commission actively campaigning. The rules in the Charter says, "The Police Commission shall," this is what the Charter says the Police Commission is supposed to do, "Adopt such rules to regulate political activities of the members of the Police Department," which includes the Police Commissioners themselves. To my knowledge, there are no such rules. We have an active politicization, if you would, of the Police Commission as we sit here. Last election, a Police Commissioner actually ran for the Council, as did the Chief of Police and we are saying give the power to the Police Commission because it is non-political? I think we are trying to fool the public in fooling ourselves. I think we need to look very closely as how this is all managed. I think we need to make charter amendments and actively work toward depoliticizing this entire process and it starts with following this through to the appeal. Thank you.

Council Chair Rapozo: I really do not know how to respond to that because that was some serious allegations, but I am going to take the high road and I would ask the rest of us to take the high road and let the people judge those comments on their own. I almost want to take a recess, but I will not. The public deserves better than that from us and that is all I will say. Councilmember Kagawa.

Councilmember Kagawa: The entire fiasco happened prior to me even coming on the Council. When the decisions were made by the Mayor, it just baffled me as to why he did not work through the normal process of what Mayor Kusaka did and work with the Police Commission instead of making such a rash decision that would challenge a rule that has been followed by all other Mayors. Councilmember Yukimura was a mayor and I am sure she did not agree with every decision of her Chief of Police, but did she fire or reprimand the Chief of Police on her own? She did not. As far as the allegations by Councilmember Hooser, the fact of the matter is Bill No. 2491 still has backlashes and if you want to blame anything, just point to yourself because Bill No. 2491 is why you are getting backlash and not this police decision.

Council Chair Rapozo:

Okay. Councilmember Kualifi.

Councilmember Kualifi: I have heard a lot of the testimony as well and the testimony from the one testifier today is the way I see it as well. It is a matter of dollars and cents. Every five thousand dollars (\$5,000) and ten thousand dollars (\$10,000) that we spend is important and we should not waste. During the political season, we always talk about efficiency, accountability, ending government waste, and I see this as waste. Waste, because to me logic tells me that the individual or the body that has the right authority to hire also has the authority to fire. Why would you give them the authority to hire if not also to fire and the authority to fire? This directly ties to discipline because in a progressive discipline system, it starts working its way. You discipline, you suspend for a length of time, and as it gets progressively serious to the point of firing. The Police Commission is there for a purpose and they have a serious job, they meet regularly, and there are very highly qualified people on there. Yes, they are all volunteers, but they are no different from us as the Council. They are representing the people, they are doing serious work, they all come from diverse backgrounds, and we look up to them and respect them. Their meetings are even televised so the community gets to actively see their work. It is not about taking power away from the Mayor. As I see it, it is their power and authority already. If the Charter needs to be clarified to make that clear once and for all, then that is where we should be going. It does not cost any money for this body or the citizens to put forward a charter amendment to clarify it. The Charter Review Commission always works on charter amendments to cleanup and clarify the Charter, so maybe this is a matter that needs to be handled in that way to get it right, which how I see it and how I have heard from the constituents. I am not going to support the funding.

Council Chair Rapozo:
Yukimura.

Any other discussion? Councilmember

Councilmember Yukimura: I think it would be courtesy to at least allow since Councilmember Chock is coming at 11:30 a.m. to allow him to weigh on this issue as well. I would like to see us extend that courtesy. But on the issue itself, I never had any reason to try to suspend or discipline the Chief of Police, but as Mayor, I did experience the many difficulties that come from trying to run a public corporation and have department heads who are appointed by Commissions, and to whom you have no power to hire or fire, and to deliver the vision that I was elected for and not have department heads who were aligned with that. If you think about it, to try and discipline, to have a lay body of volunteers who do not know the day-to-day performance of a department head, this executive-level manager, to do the disciplining is unheard of in the business sector because you do not have this line of accountability. To say that this commission system...that it is very clear that the Commission is the one who should suspend is...I do not think really good governance. The thing is that there is a law and the interpreter of the law is the Supreme Court of Hawai'i and this is a Hawai'i law. For us to second-guess what the law is and say, "We should not find out from the ultimate interpreter of the law of what the law is," is not right. Even if we were to do a charter amendment, what would be the proper charter amendment? What is the structure of government that really works well? I think it is important. The fact that the Commission had to ask Mayor Kusaka to suspend does indicate to me that the Commission does not have the power to suspend. Even if they want to, the proper process would be to tie into the Human Resources' system, which is the Mayor. If the Commission wants to suspend they ask the Mayor, but if the Mayor wants to suspend as the day-to-day supervisor of the department head, I believe that is also a power. I cannot be the ultimate interpreter of the law, it should be the Hawai'i Supreme Court.

Council Chair Rapozo:

Anyone else? Councilmember Kaneshiro.

Councilmember Kaneshiro: For me, it is not about stopping the process. The process is going to continue. We are deciding on who is going to defend whom and I think we have three (3) options. Option 1 is to approve all of these and have the two (2) attorneys fight it. Option 2 is to approve only one (1) and do not approve the other. Finally, Option 3 is you do not approve any and the County Attorney has to take on both sides. That is where I am at now. I think Council Chair brought up a good compromise because at the last meeting Mr. Trask's biggest concern was his own Office fighting each other on this case. I have heard a lot from the public and just being on television, I had a lot of people coming up to me and talking to me about it at some of the events that I attended. I think my decision last time was hard and I think it is hard now, but for me I am leaning in the favor of a compromise and the compromise would be let Mr. Trask's Office defend the Mayor, we vote on the other money, and see how it goes. Ultimately, there may not even be a case. They can send the appeal and the Supreme Court may reject it and it is done, but we really do not know how it will go and it is not up to us. It is going one way or the other. That is the way I will be voting.

Council Chair Rapozo:

Anyone else? Councilmember Yukimura.

Councilmember Yukimura: This is not "any case." It is a case that involves the structure of governance and government. I think it is very important to resolve, as it has been pointed out by Councilmember Kaneshiro that there are alternative ways to address it. I am going to be voting for this because I want to respect the County Attorney's judgement about needing Special Counsel. I have expressed my reservations about the particular counsel that has been chosen. I like the Chair's suggestion that there is a fallback position to still get the case to court and I am concerned about the strain that it will put on the Office of the County Attorney and how that will impact our needs of the Office of the County Attorney service.

Council Chair Rapozo:

Anyone else?

Councilmember Kualifi:

I have one last thing.

Council Chair Rapozo:

Go ahead, I am sorry.

Councilmember Kualifi: I just wanted to add that the Commissioner having the authority to hire, fire, and discipline does not mean that the Mayor has no day-to-day operational/managerial role. Of course the Mayor does, but the Mayor needs to work with the Commission. Ultimately, the Commission helps the Mayor make the final decision, a democratic body of diverse individuals help to make such big decision. In some communities, the voters even vote for their Chief of Police. The depoliticizing of this means you make it larger than one (1) person's decision and you have a democratic body, such as the Police Commission of respective people in the community, to help the Mayor get to that place when it is difficult. Of course, it is difficult. That is why it should be where the Mayor actually works with the Commission and the Commission does not act without the Mayor and the Mayor does not act without the Commission. Thank you.

Council Chair Rapozo: Any other discussion? Last chance. Okay. Our job as the Council, we are the policymakers. We make policy. We set policy. We have the ability to change policy by introducing a bill, a resolution, or whatever the case may be. Since I have been on the Council since 2002, I have never seen any

Councilmember introduce a resolution for a charter amendment to clarify because I think everybody was quite clear that the Mayor does not have authority. We never had reason to believe or argue, but because of this issue now, opinions have been made. Even when this happened a few years ago, no member came forward with a charter amendment to clarify it. I guess my point is this; the problem with this Country today is the policies are being sent to the Supreme Courts to determine policy. It is not their job. Their job is to interpret law, not set policy, and give councilmembers, legislatures, and congressional people a protective shell that they can hide behind. No, we set the policy. This is a policy decision. Does this body here today believe that the Mayor has the right to discipline the Chief of Police? That is what we are arguing today. You have the ICA ruling that says, "No." So, if you want to go and try another court to maybe get a different result, that is your prerogative. It has been stated many times that not funding this will stop the litigation, which is not true. We have heard that from the County Attorney. It will continue if the Mayor chooses to. If the Mayor chooses to move forward on the appeal, it will go. It is just that our County Attorney, who I have the ought most confidence in, I have seen the work of that Office since the new County Attorney took over and I have...like Councilmember Yukimura said, I have more confidence in Mauna Kea than I do with the person that we hired who is asking for double the money of the other attorney. I have no problem. Yes, it is going to take away resources, but that is his job—he is the County Attorney. And then this whole thing about the day-to-day operation. I can tell by the discussion on the table that probably not all of my colleagues do not watch the Police Commission meetings. That is clear to me, but I do. How many times has the Mayor attended a Police Commission meeting? Aside from giving away proclamations or whatever, how many times has the Mayor sat at that meeting as an ex-officio member, which he is and had the discussions with that Commission as it relates to the day-to-day operations of the Police Department? None. None that I have watched. How can he be in tune with the day-to-day operations without being at the meetings? It was also alleged that "they only meet once a month," and that is not true. They meet more than once a month. How can the Mayor sit back and be familiar with the day-to-day if he is not participating in the process that is designated for that department, which is the Police Commission meetings? However, because he is paid and because he is the Mayor is the reason he can and the Police Commission because they are not paid should have no say? That is offensive. Those people on that Commission are credible, respectable people. They are doing the best they can to make the department better. They deal with the day-to-day. They hear the reports from the traffic, patrol, detectives, special units, Chief of Police, from everybody every single meeting they get the update. They are familiar with the day-to-day. They deal with the complaints from the public, not the Mayor, but you are going to give him the right? If that is what you want, do a charter amendment and let the people decide. I can tell you every testimony I received on this agrees with what the ICA said and do you know what? I speak for the people and not for Mel Rapozo. That is what the people want and that is what they deserve. With that, the motion is to receive. I am going to take the vote. I asked you folks and that is it. The motion is to receive. Roll call.

The motion to receive C 2016-162 for the record was then put, and carried by the following vote:

FOR RECEIPT:	Kagawa, Kaneshiro, Kualī'i, Rapozo	TOTAL – 4,
AGAINST RECEIPT:	Hooser, Yukimura	TOTAL – 2,
EXCUSED & NOT VOTING:	Chock	TOTAL – 1,
RECUSED & NOT VOTING:	None	TOTAL – 0.

Council Chair Rapozo:

Next item, please.

Ms. Fountain-Tanigawa: The next item is C 2016-163.

C 2016-163 Communication (07/08/2016) from the Office of the County Attorney, requesting authorization to expend additional funds up to \$15,000.00 for Special Counsel's continued representation of the Kaua'i Police Commission and the Kaua'i Police Commission Members, in their official capacity, in Kaua'i Police Commission, et al. vs. Bernard P. Carvalho, Jr., in his official capacity as the Mayor of the County of Kaua'i, Civil No. 12-1-0229 (Fifth Circuit Court); CAAP NOS. CAAP-12-0001123 & 13-0000015 (Hawai'i Supreme Court, Intermediate Court of Appeals) and related matters: Councilmember Kaneshiro moved to approve C 2016-163, seconded by Councilmember Yukimura.

Council Chair Rapozo: Discussion? Any public testimony?

Ms. Fountain-Tanigawa: We have one (1) registered speaker, Glenn Mickens.

Council Chair Rapozo: He already testified. Mr. Mickens, did you want to testify again?

There being no objections, the rules were suspended to take public testimony.

Mr. Mickens: No, it is the same testimony.

Council Chair Rapozo: Thank you.

There being no further testimony, the meeting was called back to order, and proceeded as follows:

Council Chair Rapozo: With that, roll call.

The motion to approve C 2016-163 was then put, and carried by the following vote:

FOR APPROVAL:	Hooser, Kagawa, Kaneshiro,	
	Yukimura, Rapozo	TOTAL – 5,
AGAINST APPROVAL:	Kuali'i	TOTAL – 1,
EXCUSED & NOT VOTING:	Chock	TOTAL – 1,
RECUSED & NOT VOTING:	None	TOTAL – 0.

Council Chair Rapozo: Is it a tie vote again?

Ms. Fountain-Tanigawa: Five (5) ayes.

Council Chair Rapozo: Okay, motion carried. Next item, please.

CONSENT CALENDAR:

C 2016-167 Communication (07/13/2016) from the Director of Finance, transmitting for Council information, the Fourth Quarter Statement of Equipment Purchases for Fiscal Year 2015-2016, pursuant to Section 17 of Ordinance No. B-2015-796, the Operating Budget of the County of Kaua'i for

Fiscal Year 2015-2016: Councilmember Kagawa moved to receive C 2016-167 for the record, seconded by Councilmember Kualii.

C 2016-168 Communication (07/15/2016) from the Acting County Engineer, transmitting for Council consideration, a Resolution Establishing A School Zone With A 15-Mile Per Hour (MPH) Speed Limit For A Portion Of Kukuihale Road, Kawaihau District, County Of Kaua'i: Councilmember Kagawa moved to receive C 2016-168 for the record, seconded by Councilmember Kualii.

C 2016-169 Communication (07/20/2016) from the Director of Finance, transmitting for Council information, the Period 12 Financial Reports – Detailed Budget Report, Statement of Revenues (Estimated and Actual), Statement of Expenditures and Encumbrances, and Revenue Report as of June 30, 2016, pursuant to Section 21 of Ordinance No. B-2015-796, relating to the Operating Budget of the County of Kaua'i for the Fiscal Year 2015-2016: Councilmember Kagawa moved to receive C 2016-169 for the record, seconded by Councilmember Kualii.

Council Chair Rapozo: Any discussion or public testimony?

There being no objections, the rules were suspended to take public testimony.

There being no one present to provide testimony, the meeting was called back to order, and proceeded as follows:

The motion to receive C 2016-167, C 2016-168, and C 2016-169 for the record was then put, and carried by a vote of 6:0:1 (*Councilmember Chock was excused*).

COMMUNICATIONS:

C 2016-170 Communication (07/01/2016) from the Director of Economic Development, requesting Council approval to apply for, receive, and expend funds, in the amount of \$15,000, from the Hawai'i Lodging and Tourism Authority Charity Walk, to be used for the 2016-2017 Kaua'i Tourism Strategic Implementation Plan.

Ms. Fountain-Tanigawa: Council Chair, we received a letter dated July 29th from...

Council Chair Rapozo: Hang on. For those in the audience, turn off your cellphones, please. Thank you.

Ms. Fountain-Tanigawa: We received a letter dated July 29th from the Office of the Economic Development requesting that this item be received as they have been notified that funds are no longer available.

Councilmember Kagawa moved to receive C 2016-170 for the record, seconded by Councilmember Yukimura.

Council Chair Rapozo: Just for clarification, it is not that the funds are not available. It is that the Tourism Authority felt that we did not qualify and that the County should not be eligible for those funds. That is the real reason. It is not that the funds are not available; it is because they did not want to give it to us. With that, any discussion or public testimony? I will suspend the rules.

There being no objections, the rules were suspended to take public testimony.

ANNE PUNOHU: *Aloha*, Anne Punohu. I came here today to speak on this issue. I am glad the decision is made, but I have something to say. The Administration has no right to ask for any funds from the Hawai'i Lodging and Tourism Authority Charity Walk. The Hawai'i Lodging and Tourism Authority Charity Walk funds are only supposed to be...and I am speaking as a recipient of many of those funds. I find it appalling, I am very upset and angry, and that is why I am here today because how dare the Administration ask for funds from the Hawai'i Lodging and Tourism Charity Walk. Those people walk every day to take care of people like myself and many others in this community who need help. How dare they ask for funds for this? I am very glad with the decision; however, let us hope this does not set a precedent and I hope that I never have to see something like this on the agenda again. *Mahalo, aloha*.

Council Chair Rapozo: Thank you. Anyone else? Further discussion?
Councilmember Hooser.

There being no further testimony, the meeting was called back to order, and proceeded as follows:

Councilmember Hooser: I just have to reiterate what the speaker said. When I first saw the item on the agenda, I thought, "What in the world are we taking charity funds from the Hawai'i Lodging and Tourism Charity Walk for." I am glad to see that we are not going to be doing that apparently. Thank you.

Council Chair Rapozo: Thank you. Any other discussion? Seeing none.

The motion to receive C 2016-170 for the record was then put, and carried by a vote of 6:0:1 (*Councilmember Chock was excused*).

C 2016-171 Communication (07/08/2016) from the Housing Director, requesting Council approval of the following:

- a. The fee simple sale of property located at 2080 Manawalea Street, #604, Lihue, Hawai'i 96766 Tax Map Key (TMK): (4) 3-3-003-036-0032, for not more than \$275,000.00, to a participant of the County's Affordable Housing Waitlist whose

household income does not exceed 140% of the Kaua'i Median Household Income (KMHI); and

- b. Authorize the County Clerk to sign legal documents related to the sale transaction.

Councilmember Yukimura moved to approve C 2016-171, seconded by Councilmember Kagawa.

Council Chair Rapozo: Any discussion? Councilmember Yukimura.

Councilmember Yukimura: I just wanted to express my gladness that we are exercising a buyback on a house that is affordable and will go to someone who needs an affordable house and is on our County Affordable Housing Waitlist.

Council Chair Rapozo: Thank you. Any other discussion?

The motion to approve C 2016-171 was then put, and carried by a vote of 6:0:1 (*Councilmember Chock was excused*).

(*Councilmember Kualii was noted as not present.*)

C 2016-172 Communication (07/11/2016) from Council Chair Rapozo, transmitting for Council consideration for inclusion in the 2017 Hawai'i State Association of Counties (HSAC) and County of Kaua'i Legislative Packages, A Bill for An Act Relating to Tort Liability, to delete the sunset provision for the liability exceptions for county lifeguards: Councilmember Kagawa moved to approve C 2016-172, seconded by Councilmember Kaneshiro.

Council Chair Rapozo: Any discussion? Councilmember Yukimura.

Councilmember Yukimura: Chair, I just want to thank you for introducing this as we know 2017 is the sunset date, so it is very important to remove that date so that we can continue to have protection against tort for our County lifeguards who provide such an important service to the public; both residents and visitors.

Council Chair Rapozo: Thank you very much. Any other discussion? This is one of the items that has been on our, not only Hawai'i State Associations of Counties (HSAC), but our County packages as well, this goes up to the Legislature every year and can you imagine that we have to fight for this to the State? This Bill protects our lifeguards when they go out and do rescues, basically, it gives them some immunity from being sued. Whoever drafted this Bill way back put an end date that, "Okay, after this point, the State is not going to indemnify our lifeguards." So, if they go out and get sued, they are on their own. Now, that is really silly to think and every year we have to go up to fight for this. The Fire Department has been really active, the Lifeguard Associations have been, and then you get this lobby group, the personal injury attorneys, who fight against us. Apparently, they are more successful because every year we basically are told that "We will deal with it next year." A couple of times they have extended the sunset date. That sunset date needs to go. I am asking and begging all of you as we get through the political season, you still got some time

before some State races are going to be decided, ask them what is their commitment to this Bill? This needs to go. It needs to be in perpetuity and not a sunset date. I am asking for your help and this is for everybody that is watching because apparently we are not being heard when we get to the Legislature. This is the last year. This sunsets in June. Please, as you go to the fundraisers, as you go and see all these folks running, ask them what is their commitment is to the Beach Liability Bill because it is that important. Any other discussion?

The motion to approve C 2016-172 was then put, and carried by a vote of 6*:0:1 (**Pursuant to Rule No. 5(b) of the Rules of the Council of County of Kaua'i, Councilmember Kuali'i was noted as silent (not present), but shall be recorded as an affirmative for the motion; Councilmember Chock was excused*).

(*Councilmember Kuali'i was noted as present.*)

C 2016-173 Communication (07/12/2016) from the Executive on Aging, requesting Council approval to receive and expend State General Funds for Fiscal Year 2017 and to indemnify the State Executive Office on Aging, in the amount of \$88,863.00 to be used by the County of Kaua'i, Agency on Elderly Affairs for the operating costs of the Aging and Disability Resource Center: Councilmember Kaneshiro moved to approve C 2016-173, seconded by Councilmember Yukimura.

Council Chair Rapozo:

Any discussion? Public testimony?

There being no objections, the rules were suspended to take public testimony.

There being no one present to provide testimony, the meeting was called back to order, and proceeded as follows:

The motion to approve C 2016-173 was then put, and carried by a vote of 6:0:1 (*Councilmember Chock was excused*).

Council Chair Rapozo:
present.

Can we take C 2016-176 since Kealoha is

There being no objections, C 2016-176 was taken out of order.

C 2016-176 Communication (07/18/2016) from the Executive on Aging, requesting Council approval to receive and expend Federal funds for Fiscal Year 2017 and to indemnify the State Executive Office on Aging, in the amount of \$551,641.00 to be used by the County of Kaua'i, Agency on Elderly Affairs for the provision of Title III services of the Older Americans Act which includes information and referral, outreach, legal assistance, congregate meals, home delivered meals, evidence based programs such as EnhanceFitness or Better Choices, Better Health, and caregiver support services: Councilmember Kuali'i moved to approve C 2016-176, seconded by Councilmember Kaneshiro.

Council Chair Rapozo:

Any discussion? Councilmember Kagawa.

Councilmember Kagawa:

I have a question for Kealoha.

Council Chair Rapozo: With that, I will suspend the rules.

There being no objections, the rules were suspended.

LUDVINA K. TAKAHASHI, Executive on Aging: Kealoha Takahashi,
Elderly Affairs.

Councilmember Kagawa: Thank you. My question is, is this the same,
more, or less than the prior year?

Ms. Takahashi: The same. This is federal funds.

Councilmember Kagawa: So, the same amount. I guess the follow-up
question is, does it mean any increase or decrease, in any particular area, or is it
services for all of these things that it benefits, will basically remain the same?

Ms. Takahashi: That is correct.

Councilmember Kagawa: Thank you.

Council Chair Rapozo: Councilmember Yukimura.

Councilmember Yukimura: Good morning, Kealoha. Thank you for being
here. My question is about legal services.

Ms. Takahashi: Yes.

Councilmember Yukimura: Is this for a continuing contract or will you be
going out with a request for proposal?

Ms. Takahashi: We have amended the contract, so it is
extended for another year. We do go out for proposal. Currently, we have the Legal
Aid Society, who is our contractor.

Councilmember Yukimura: I am concerned because I have been getting
feedback from some elderly about the services and I wondered how you evaluate
whether the elderly are being served adequately.

Ms. Takahashi: We do surveys and get feedback in that
fashion.

Councilmember Yukimura: Because some are coming to me. The question
is for every elderly person who goes to Legal Aid for services, do they fill out a form
about whether they are satisfied with their services or whether they were able to get
services? So that you sort of have an idea of what the need is when people go and
whether it is being met.

Ms. Takahashi: Currently, no, but we will work on that.

Councilmember Yukimura: I do not know how one would do that exactly, but because I have been getting some feedback about it, I thought maybe you could find a way to measure that somehow, that would be good.

Ms. Takahashi: I have a meeting with the contractors next week so we will cover that item.

Councilmember Yukimura: Okay, thank you very much.

Council Chair Rapozo: Councilmember Kualii.

Councilmember Kualii: Is there any unmet need with regards to congregate meals and home delivered meals? Are there *kūpuna* who are requesting and who qualify that are not being serviced because they have to be on a waitlist or anything like that?

Ms. Takahashi: Currently, we do have a waitlist for home delivered meals.

Councilmember Kualii: What is the status of the waitlist? Is it very large?

Ms. Takahashi: Right now, we have sixteen (16) on the waitlist and I am not sure how long they were on the waitlist. I will need to check.

Councilmember Kualii: Each year you get these federal funds and you move the waitlist or new people come and people get off the waitlist and more people come on to the list?

Ms. Takahashi: Usually some of the participants either decide not to continue or they are deceased, then we put someone new on. Pretty much when we have them on the program, we do an assessment every year to see their eligibility and it continues, if not, we will dispense at that time, but usually it is for a long time.

Councilmember Kualii: Is this program strictly federal funded or do we have other sources of funding?

Ms. Takahashi: For the home delivered meals, it is federal, state, and county funding.

Councilmember Kualii: Federal, state, and county.

Ms. Takahashi: Yes.

Councilmember Kualii: I am wondering if during budget time, if during the course of the year you average a certain amount on the waitlist, if you did not ask for more money from the County to eliminate the waitlist because sixteen (16) does not seem like a lot. I do not know what it averages throughout the year, but it is something to think about in the next cycle. Thank you.

Council Chair Rapozo: Any other questions? If not, thank you very much.

Ms. Takahashi: Thank you.

The meeting was called back to order, and proceeded as follows:

Council Chair Rapozo: Further discussion?

The motion to approve C 2016-176 was then put, and carried by a vote of 6:0:1 (*Councilmember Chock was excused*).

C 2016-174 Communication (07/15/2016) from Council Chair Rapozo, transmitting for Council consideration for inclusion in the 2017 Hawai'i State Association of Counties (HSAC) and County of Kaua'i Legislative Packages, a proposed amendment to Chapter 291C, Hawai'i Revised Statutes (HRS), that would direct the traffic fines and forfeitures collected for uncontested traffic infractions to the county in which the citation was issued. Further, should the Bill be approved by the State Legislature, all funds derived from unadjudicated traffic infractions be directed towards addressing the County's backlog in road resurfacing, repairs, or reconstruction: Councilmember Kualii moved to approve C 2016-174, seconded by Councilmember Kagawa.

Council Chair Rapozo: Any discussion? This is another one that we have taken off the HSAC package because we wanted to focus on other ones, but as the State has been keeping the cap on our Transient Accommodations Tax (TAT) and we are trying to find additional streams of revenues for the Counties, I feel that it is the right time now to go back. This is not taking any money away from the State, this is creating new money on the unadjudicated fines; traffic tickets that the people just pay the fine. So it is our County police that writes the ticket, it is our County Prosecutor that processes it, and then the violator pays the fine to the State. We should get a portion of that and again, this is just another way of generating revenues for the Counties. We are hopefully going to try again and just to let everybody know that the items that we are voting on today are for both the HSAC Legislative package as well as the County's Legislative package. The County's one will go to the Mayor and hopefully he signs it and it becomes part of the County's Legislative package. HSAC's will go to HSAC, we need four (4) votes on the HSAC board, and then it becomes part of the Legislative package for HSAC. Councilmember Yukimura.

Councilmember Yukimura: Do you know how much of those adjudicated fines add up to?

Council Chair Rapozo: I do not have it. It is going to be dependent on the percentage. I do not have the numbers, but I can get that for you. I think Aida might have it.

Councilmember Yukimura: Okay, I think that would be good to know. Also, where is that money going now?

Council Chair Rapozo: It just stays with the State.

Councilmember Yukimura: So, we are taking money away from them than?

Council Chair Rapozo: No, because we are looking for a possible surcharge so it will be added on to the existing fees and it would not be much.

Councilmember Yukimura: I see.

Council Chair Rapozo: That is one way of doing it without impacting the State.

Councilmember Yukimura: Do we know how much the surcharge will produce?

Council Chair Rapozo: That is all going to be dependent on the discussions. I expect the same result, they are going to just through this straight in the rubbish can, but we want to give it a shot. We want to try...or at least resurface the discussion with the State. Hopefully now because they are so adamant about not removing the cap that they will entertain these other opportunities for the Counties.

Councilmember Yukimura: It is just that in order for us to argue for it, it would be good to at least know what figures we are talking about.

Council Chair Rapozo: That discussion will actually come at some point. I am trying to get this on the HSAC, so we can hear from all four (4) Counties, and then that discussion will happen. If it gets approved there, it will get modified there, it will come back to the Councils, and then we can have the discussion at that point.

Councilmember Yukimura: That would be fine. It is just that if you do a percentage, you want to know what the base is and that is how you would decide where to set the percentage level.

Council Chair Rapozo: Yes, and I agree. It is just that we want to have that broad discussion at HSAC so that all Counties can contribute.

Councilmember Yukimura: Okay.

Council Chair Rapozo: I did not want to do it Kaua'i centric and then...it is amazing what happens at those HSAC Meetings some times.

Councilmember Yukimura: I know. Because we do not all track the HSAC Meetings, if that can be circulated to us as well.

Council Chair Rapozo: Sure thing.

Councilmember Yukimura: Thank you.

Council Chair Rapozo: Councilmember Kualii'i.

Councilmember Kualii: Chair, I agree with the points that you made and I would just say that I hope that this can pass our Council and all four (4) Counties so that the Legislature can have one (1) more thing to consider. If passed, we can have our people talk to our legislators and fight for this County and our deserved revenue with the TAT and this as well. I think the issue about the State not having to expend time or resources to collect because these are unadjudicated, so there is no court time. Yes, it will be revenue that they would not get, but they are not doing anything to get that revenue right now. Our County police is issuing the tickets and then the person who is being ticketed is just paying is. We should at least get some of that because we are expending the time and resources. It is an uphill battle, but each county can work all their legislators and go from there, but I think it needs to be part of the discussion as far as the revenue for the counties.

Council Chair Rapozo:

Councilmember Yukimura.

Councilmember Yukimura: I appreciate all the efforts to increase the revenues. I just want, for the record, to ask the Administration to really propose a plan on roads in limbo because when I was lobbying for the excise tax in 2015, they tried to subvert our revenue effort by saying you can have the excise tax, but here you take care of roads in limbo, which would have totally negated the excise tax if they had given it to us. Therefore, we have to be prepared. That issue has to be resolved. I have suggested a joint task force to do that, but it will rear its head at the time you do not want it to rear its head, if you do not invest it.

Council Chair Rapozo:
testimony? Mr. Mickens.

Any other discussion? Is there any public

Mr. Mickens: For the record, Glenn Mickens. Thank you, Council Chair. Do we not have a lobbyist over there or our representatives that are supposed to be fighting for these things? That is our money, right? We do not have to raise excise tax. The money we get from traffic tickets et cetera or the TAT, that is our money. Who do we have that is fighting for it? Why should we make a resolution to send over? Why do you need to go through HSAC to be able to do this? I mean, they will disregard it anyway. It just seems like we should have some representatives, lobbyists, or something over there fighting for us saying, "We do not have to tell the people that we want to raise their tax just to pay for more fixing of our roads." All we have to do is get the moneys that we deserve. We are paying our Police Department to go out and give traffic tickets, so why should we not be able to get the moneys that we paid for? It just seems wrong that we do not have somebody over there. We have four (4) representatives, Ron and et cetera, but I do not hear from them that they are really trying to get these things for us. Thank you, Council Chair.

Council Chair Rapozo: Thank you. The lobbyists are our State Senator and the three (3) Representatives.

BRUCE HART: I, too, want to commend and encourage each and every one of you to continue to look at other ways to support revenue for the roads. I said the last time and since the TAT was brought up, I made my position of the TAT. We deserve a greater share. Now just how much of the greater share, that is up for discussion, but the State seems to be of a mind that they will not even discuss it with us. I would just like to say to the State, "Come on people. We are all struggling

and we are looking for ways, so let us open the door and let us discuss this.” Maybe Mr. Mickens should get a job over there. Anyhow, keep working at it. We will find a way. Thank you.

Council Chair Rapozo: Anyone else? Seeing none, I will call the meeting back to order. Further discussion? Councilmember Kuali‘i.

There being no further testimony, the meeting was called back to order, and proceeded as follows:

Councilmember Kuali‘i: I am not sure on the last part of this summary statement that the funds be directed towards addressing the County’s backlog and road resurfacing, repairs, or reconstruction. Is that a limitation or is it just going to...because I would think that we need to also add road safety. I have been hearing so much from constituents about...and a lot of it is the highway, so it is the State Highway, but the need for crosswalks and lowering the speed limit. We have an issue coming up today and it seems like if this is traffic fines, that not only should it go to the roads resurfacing, repairs, and reconstruction because we know so much about the one hundred million dollar (\$100,000,000) backlog, but different Counties may not have the same issue. I do not believe they do. For us, this is one (1) of the priorities. I think if it is totally specified like limiting it, I would like to add road safety.

Council Chair Rapozo: It is not specified in the Bill because we do not think the State should be telling us how to spend that money, but that would be our position. Our position would be that those funds would be used for those. Right now, if the Bill passes, it would be the Counties choice on how to use those funds. Those funds would come in...

Councilmember Kuali‘i: Do we know why it is listed here like that? The last part of the communication says...

Council Chair Rapozo: That was my suggestion.

Councilmember Kuali‘i: But it is not a limitation?

Council Chair Rapozo: Not in the Bill.

Councilmember Kuali‘i: Okay.

Council Chair Rapozo: Should the Bill pass, then the County would have the discussion of where those funds will be utilized.

Councilmember Kuali‘i: If we do talk about where it could be utilized and we do mention the backlog of resurfacing, repairs, and reconstruction, let us make sure we also mention road safety because I think it is important.

Council Chair Rapozo: Hopefully we can get the Bill at least passed at HSAC so we can get the funding source and then we can have the discussion on how those funds will be used. Any other discussion? Seeing none.

The motion to approve C 2016-174 was then put, and carried by a vote of 6:0:1
(*Councilmember Chock was excused*).

C 2016-175 Communication (07/15/2016) from the Deputy Planning Director, requesting Council approval to apply for, receive, and expend State Fiscal Year 2017 funds, and indemnify the State of Hawai'i Department of Land and Natural Resources, State Historic Preservation Division and the National Park Service, in the amount of \$2,000.00 with an anticipated in-kind match of \$1,200.00 from the County of Kaua'i Planning Department, to be used to procure services of a consultant to promote historic preservation at the grass roots level and to nominate the Hanapēpē Bridge to the State of Hawai'i and National Register of Historic Places: Councilmember Kaneshiro moved to approve C 2016-175, seconded by Councilmember Yukimura.

Council Chair Rapozo: Any discussion before we call for public testimony? Any public testimony? I will suspend the rules. Anybody registered to speak?

There being no objections, the rules were suspended to take public testimony.

DOROTHEA HAYASHI: Dorothea Hayashi. Good morning, Council Chair and Councilmembers. I am hoping that this will...well, it said Hanapēpē Bridge and I am concerned. Should we put in 1911 just to identify because there are two (2) bridges in Hanapēpē? The resolution today will finally bring closure to the hopes of many people who have cared for and have really pushed for the historic registration of the 1911 Hanapēpē Bridge. Thank you also to the present Historic Preservation Commission members for their help in getting us here today. Before beginning this journey of the repairs of the bridge, my hair was much, much darker, so you can see it has been a long, long road. When I joined a few residents to begin the effort to repair the bridge, we believed the bridge was on the historic list. It was on the Hawai'i State Historic Bridges Inventory, but then politics is a strange animal. The words were deceiving because it did nothing to protect the historic existence of the bridge. We were informed that the structure of the bridge could be altered because it was not officially placed on the historic list. Confusing as it was to us, private citizens, so within our little group, one (1) person took it upon herself because she felt that our hopes would be taken away. She went through the process assured that it would go all the way up to the National Register of Historic Places ("National Register"). It was about a year or two (2) ago that we found out the promise was never fulfilled. Once again, a few of us appealed to the Kaua'i Historic Preservation Review Commission and this is the result of their efforts to help us get this unique bridge, which is one of a kind already in the State of Hawai'i if you read the inventory on the description of the bridge. We gray-haired citizens used this bridge in our youth and we feel that it deserves to be historically recognized. Together with the worn-out bridge, let us always remember how the people of the 1911s lived and worked in our little town using this bridge. Why are we constantly changing our towns to look like cities of the mainland, United States of America (USA)? We, in Hawai'i, have had a unique life that is now disappearing before our eyes as we are changing our streets and everywhere we see it. I am sorry.

Council Chair Rapozo: Okay. Thank you. Anyone else wishing to testify? Okay.

ELSIE GODBEY: My name is Elsie Godbey. I guess we are asking for some help in registering the National Register with one thousand two hundred dollars (\$1,200) amount from the Council approval to help us. Anyway, I hope you will okay it because I feel that our association, which is now formulated by business and professional association that started in the mid-1980s or something like that and under it was the main street program. For the association to be on the main street program, we were required to hire a consultant and it cost us, I do not know the exact amount now, but it costs us about two thousand dollars (\$2,000) to hire this consultant. We were determined to preserve our town. We had to fundraise a lot to be able to keep this consultant and be on the main street program. I feel that the association then and now and the main street program, we raised a lot of money to keep going. We had a lot of fundraisers, good fundraisers, raft race, and other activities. It ran us very tired having to have fundraisers every year to pay for the consultant and also other things of course. I feel that this thousand two dollars (\$1,200) from you to help us get on the National Register and have help to apply for the National Register would be really nothing to what we went through to try to preserve our town. I just got word on Monday to address this, so I am not real organized. When Ron Kouchi was on the Council, there were minor things that should have been done to keep the bridge in repair, such as the first railing had wires that never got fixed and it was just open and we felt that it was dangerous. It was meant to keep the little kids from going over to into the river. Anyway, when he was on the Council, he came down and we...

Council Chair Rapozo: Hang on real quick. Is there anyone else wishing to testify on this matter? Seeing none, you can continue.

Ms. Godbey: We asked him if they could repair it. Just a simple little wiring that was a safety thing for little kids on the first railing and he did. That was about the last time I know of where any help was given. It has been years since pedestrian bridge has been blocked for us to use and I think it is about time that something gets done. We celebrated our 100th year anniversary of the bridge and even then, the pedestrian bridge was closed. It still is now. It is really a shame that we have had to endure that. Thank you.

Council Chair Rapozo: Thank you.

Ms. Godbey: Can I say one more thing?

Council Chair Rapozo: Yes.

Ms. Godbey: Going through my notes, we had applied to be on the National Register and looking at all these notes, this was years ago. It is during the time when the State Preservation Office had turmoil where the head of the preservation had to be transferred because they were not doing their job. They had backlog of reviews and the Historic Preservation Office spent job money on cars and iPads. This was when we sent in our application and when I would call the office, they would tell me they were still reviewing it and they would refer back to Kaua'i protocol. State Historic Preservation Division (SHPD) submitted no significant effect and...anyway I cannot read. Anyway, we did contact the State after we put in an application and I had call Ross Stephenson twice about where our application was

and at that time I was told that he was sick. I called his home and he said that our application was sent to the National Register and that was it.

Council Chair Rapozo: Thank you. Anyone else? Seeing none.
Councilmember Yukimura.

There being no further testimony, the meeting was called back to order, and proceeded as follows:

Councilmember Yukimura: I have a question for Planning.

Council Chair Rapozo: Ka'āina. I will suspend the rules.

There being no objections, the rules were suspended.

KA'ĀINA S. HULL, Deputy Planning Director: Deputy Planning Director
Ka'āina Hull.

Councilmember Yukimura: Good morning, Ka'āina.

Mr. Hull: Good morning.

Councilmember Yukimura: Does the Planning Department plan to procure a consultant with a total of three thousand two hundred dollars (\$3,200), with a specific project of getting the Hanapēpē Bridge on the Historic Register?

Mr. Hull: The funds are not County funds. It was part of the certified local government program, which is under the Department of Interior at the federal government's level, which they dole out moneys to various Counties or municipalities that have adopted the certified local government program concerning historic preservation. It is a grant application process which we anticipate two thousand dollars (\$2,000) being utilized for a hiring of a consultant and roughly one thousand two hundred dollars (\$1,200) will be soft match from the County. That would be for the specific purpose of a consultant drafting the nomination papers up for the Hanapēpē Bridge to be nominated to both the State and National registry.

Councilmember Yukimura: And that is pretty much going to be the assignment. Is there any other thing that you will be expecting of this consultant?

Mr. Hull: No.

Councilmember Yukimura: The sole purpose is this?

Mr. Hull: Correct.

Councilmember Yukimura: Okay. The bridge is already on the State Register? No? It is neither the State nor the National at this point.

Mr. Hull: One of the charges of the Kaua'i Certified Local Government Program is to maintain a historic inventory of historical structures throughout the island. On that inventory are structures that have been identified as

historic, which one of them is the Hanapēpē Bridge. The next level of essentially establishing it as a historic site is the State Registry and then the National Registry. The State and the National Registry are a fairly similar process and as testified by members of the public as they testified for several years before the Kaua'i Historic Preservation Review Commission that it should be put on both registries. Ultimately, the Kaua'i Historic Preservation Review Commission agreed with that testimony and understood that the programs that are currently for laypeople in the public to get these nominations done, so ultimately a motion was made and the board decided to apply for these funds.

Councilmember Yukimura: How will the proposed repairs affect the bridge?

Mr. Hull: It depends on how the nomination itself goes. There is a common misconception in the public that if you are on these registries, that repairs or modifications cannot be done and that is false. There are two (2) different layers for both public and private sector. Quite frankly, if it is a public structure that is over fifty (50) years old, automatically gets bumped into that category of historically significant and cannot move forward without State Historic Preservation Review Division approving the project. If the nomination is made, ultimately it depends on what the nomination highlights as historically significant. If there are sections of the bridge that are not found to be particularly historically significant, later on repairs or modifications are possible, and even to the point that some changes can be made to historical structures even if it is found that that particular section, say it would be a railing or it could be the walkway, is found to be significant within the nomination papers. Insofar as the applicant, which in this case would be the Department of Public Works, has proper or acceptable mitigation measures that are deemed acceptable by the State Historic Preservation Division. It depends what type of repairs and modifications are being proposed. I can say one example is the bridge in Wailua that is on both the State and National Registry and it is at a point of such disarray that it needs to be fully replaced. Like I said, it is on the State and National Registry. They went through their review, they did their environmental assessment process, they consulted SHPD, and they are doing a full-scale replacement of the bridge that meets the review and requirements of SHPD. It is not to say that repairs and/or replacements cannot happen once it is on the registry.

Councilmember Yukimura: Does the Department of Public Works have plans for repairs of this bridge?

Mr. Hull: There are plans for repair. We have been in discussions with the Department of Public Works ever since this nomination issue came up. There is a current waterline being proposed on the bridge, which has been reviewed by the Kaua'i Historic Preservation Review Commission.

Councilmember Yukimura: It has or has not?

Mr. Hull: Has been.

Councilmember Yukimura: Okay.

Mr. Hull: There are additional repairs just to keep up with the structural integrity that were recently submitted to the Kaua'i Historic Preservation Review Commission and those repairs were found to be in keeping with the historical significance of the bridge. There are discussions of ten (10) or twelve (12) years down the line, I know, of a full whole scale replacement of the bridge possibly, but above and beyond that, I am not aware.

Councilmember Yukimura: Okay, thank you.

Council Chair Rapozo: Any other questions for the Planning Department? Councilmember Kagawa.

Councilmember Kagawa: Thank you, Ka'āina. Along the lines of Councilmember Yukimura's questions, is there any financial advantage or significance of being on either list for federal or state funding if we go the route of restoring the bridge exactly the way it was?

Mr. Hull: Councilmember Kagawa, I know for private structures, indeed, there is a financial incentive as far as tax incentives. For public structures, I would have to double check. I do not believe there would be a specific financial incentive though.

Councilmember Kagawa: I believe all of our bridges qualify for federal matching, but I was wondering if it is on the National Registry, can you even get a higher match?

Mr. Hull: I would have to get back to you on that. I do not know that off the top of my head. I apologize.

Councilmember Kagawa: Second question is, it is interesting that I received a call from a person who just acquired the first gas station on Kaua'i and they are encountering significant problems with trying to fix the building and meet the needs of the historic preservation building. From what I understand, it is all rotten and old. It seems to be really strict that they need to try and to the upmost get it back to how it looked because it was the first gas station on Kaua'i. I am wondering why is the government agency so strict with that gas station and then the County when it comes to this bridge, it is easy for us right from the beginning to say, "Well, the walkway is not Americans with Disabilities Act (ADA) required and therefore we are going to go with significant modifications to the original bridge." I am wondering is it that the government can be less strict on itself than the private sector?

Mr. Hull: No, I would have to know about the specific gas station, but I would say that it is the flip that is much stricter on government. In fact, the government structure, just in it of itself of being a government structure and being older than fifty (50) years old, someone automatically bumps it into this further regulatory historic review by historic agencies without it even being on the registry, as opposed to if it is a private structure that is not on the registry and over fifty (50) years old, it does not get the same scrutinization. But if it is on the registry, it is almost like you have the public structure over fifty (50) years old that is going to be viewed at a higher level of scrutiny and the only way that a private structure would

get that same scrutiny is if it was on the registry, so it is kind of the flip. It is also a case-by-case on what is being specifically proposed for that gas station.

Councilmember Kagawa: Thank you.

Council Chair Rapozo: Councilmember Yukimura.

Councilmember Yukimura: Given that position of private and public structures, is that why SHPD has been reviewing the issues of Hanapēpē Bridge even though it is not on either register?

Mr. Hull: I do not understand your question.

Councilmember Yukimura: Just the fact that it is a public structure that is over one hundred (100) years old is throwing it into their review because you said they are not on either register right now.

Mr. Hull: Yes, the improvements that were proposed for when say the Department of Water was doing the water line and when the Department of Public Works were doing the minor repairs, those got reviewed by the Kaua'i Historic Preservation Review Commission (KHPRC) no matter what, as well as SHPD, just because it is a public structure that is over fifty (50) years old. It got dumped up as well because it was on the inventory and then further scrutinization and looking at actual nomination comes from just a lot of the overall community testimony and community input at the KHPRC level to get this on the list.

Councilmember Yukimura: Okay, so there are three (3) categories that I heard, a public structure over fifty (50) years old, and then there is something about being on the inventory, am I correct?

Mr. Hull: You could actually say there are four (4) levels. For the bridge there is a public structure that is over fifty (50) years old is just one level of review.

Councilmember Yukimura: Okay.

Mr. Hull: A public structure that is over fifty (50) years old and on the Kaua'i Historic Inventory, which is another level, and then third level would be the State Historic Registry, and then the fourth and final level would be the Federal Historic Registry.

Councilmember Yukimura: Okay, thank you. I never did understand that, so I appreciate the education. Thank you.

Council Chair Rapozo: Any other questions for the Planning Department? If not, thank you. Further discussion?

The meeting was called back to order, and proceeded as follows:

Council Chair Rapozo: I just want to thank the two (2) women that testified for their persistence. I thought this bridge was already on the registry, I

really did, and I was not aware of the turmoil back then. I think this Council had been told that that bridge was on the registry. Thank you to the Planning Department for helping out the community and of course the community for just not stopping. I appreciate that.

The motion to approve C 2016-175 was then put, and carried by a vote of 6:0:1 (*Councilmember Chock was excused*).

C 2016-177 Communication (07/21/2016) from Council Chair Rapozo, transmitting for Council consideration for inclusion in the 2017 Hawai'i State Association of Counties (HSAC) and County of Kaua'i Legislative Packages, A Bill for An Act making an appropriation for Emergency Medical Services, to appropriate funds to the Department of Health for Fiscal Year 2017-2018 for the purchase of an ambulance vehicle and the operational costs for one ambulance unit, including equipment, supplies, and personnel costs for state-certified emergency medical services personnel, for a 24-hour, 7-days-a-week ambulance unit for the County of Kaua'i: Councilmember Kualii moved to approve C 2016-177, seconded by Councilmember Kagawa.

Council Chair Rapozo: Thank you. At this point, I will suspend the rules and I will give my brief background, and then ask representatives that are here to maybe expand or answer questions. The reason this is on is asking for HSAC's support. At the last legislative session, there were several requests for funding of ambulances throughout the State. The legislature did not really take a look at that. It was just a lot of money. Another bill was introduced to basically create a rapid response unit and that did not go. I am told that the American Medical Response (AMR) has basically come together and they are going to come up with one (1) request for one (1) new ambulance in this next legislative session, and Kaua'i happens to be the first County that they will be seeking funding. That is why we have this here today. If that needs to be corrected, I see the correctors here. Is anyone here prepared to come up? Yes, please. I will suspend the rules. We have three (3) seats. I received a call from the Fire Chief last night and asked, "Hey, what is going on?" He thought we were taking over the ambulance and that is not what this is about. This is simply about getting State funding to put one (1) more ambulance station here on Kaua'i.

SPEEDY BAILEY: Thank you, Chair Rapozo and Councilmembers. My name is Speedy Bailey and I am the Regional Director for American Medical Response. It has probably been about fifteen (15) years since I have been in front of the Council. I see some familiar faces. This is the Operations Manager Tito Villanueva, on Kaua'i. Thank you for this initiative. We appreciate the discussion and the support. You are correct when you say that there were a number of Emergency Medical Services (EMS) bills in front of the legislature this session. None of them passed. It was a very difficult session in terms of all of the priorities. A lot of money for hospitals and health care, but EMS was not funded although we had a large support from the Kaua'i initiative. We got to the very last day, the very last hearing, and it was deferred because it was not funded from the Finance Committees. Again, we appreciate this initiative. We have since met with the State Department of Health. Dr. Brownstein who is the Chair of the EMS branch sends his regards. He is sorry he could not be here on the short notice, but he is supportive of the initiative, and would like me to communicate that. As an EMS community, we have been meeting, but it is not just American Medical Response that

is meeting, but all the providers throughout the State, such as the City and County of Honolulu, the Hawai'i County Fire Department, the EMS Branch, the colleges, and sort of setting the vision and the path for the strategic plan in terms of initiatives. Those discussions are going on and I will be clear that there are a number of initiatives, one which is Kaua'i's Ambulance Service. I would like to mention that we have not had an initiate here on Kaua'i since 1992, so in terms of the Statewide system, there have been a number of other projects throughout the State. As a group of stakeholders, we are meeting and setting a priority list of which Kaua'i is on the list, but there is also Pāhoa, Big Island, and the City and County of Honolulu has its request. Those are being discussed and vetted, if you will. Again, we appreciate this. I think it would be helpful. It is helpful to have this discussion. I think that the County stepping up and initiating this speaks to the community need. Like I mentioned since 1992, no EMS ambulances, which is not such a bad thing. Kaua'i has had a very good system. I managed EMS across the State, we have operations in every County and I applaud what Kaua'i has done throughout its history with a cooperation and collaboration between the American Medical Response and the Fire Department. You have one of the best-integrated systems in the State and I say that without pause because like, I said we do services throughout the State. Certainly, there has been growth on Kaua'i, you all see it. In 1992, we probably had one (1) ambulance for every ten thousand (10,000) people and that number has changed from fifty thousand (50,000) to ninety thousand (90,000), with all of your visitors and commuters. There are big city issues with traffic and so taking care of the population on Kaua'i both geographically and the population demographic, this is a good time and good a discussion to have. I am available for any questions.

Council Chair Rapozo: Thank you. Any questions? Councilmember Yukimura.

Councilmember Yukimura: Are we treating these men as resource people right?

Council Chair Rapozo: Yes.

Councilmember Yukimura: Okay. Thank you. Good morning, Speedy and Tito. Thank you for being here. What is the cost that we are advocating for the purchase of an ambulance and the operational costs for one (1) ambulance unit including equipment, supplies, and personnel costs for a twenty-four (24) hour, 7-days-a-week ambulance unit?

Mr. Bailey: Thank you. The bill that was put forth to the legislature was for one million three hundred thousand dollars (\$1,300,000) for an ambulance service twenty-four-seven (24/7) and that is life support. That is the same price that we have been discussing in our budget preparations with the State going forward, so that would be the total costs, everything included.

Councilmember Yukimura: There is the ambulance you buy, which is a one-time cost for the life of the ambulance.

Mr. Bailey: That is correct.

Councilmember Yukimura: What is the life of an ambulance?

Mr. Bailey: Well, under the State contract, it is either seven (7) years or two hundred fifty thousand (250,000) miles, whichever comes first. The cost of that is amortized over the life of that ambulance.

Councilmember Yukimura: What is your operational cost per year? Is it one million three hundred thousand dollars (\$1,300,000)?

Mr. Bailey: Yes. That would be the cost of everything included such as personnel, equipment, supplies, fuel, rent...

Councilmember Yukimura: That is your annual cost?

Mr. Bailey: Yes.

Councilmember Yukimura: How many ambulances do you have today on Kaua'i?

Mr. Bailey: We have five (5) under contract with the State of Hawai'i.

Councilmember Yukimura: Okay.

Mr. Bailey: Five (5) twenty-four-seven.

Councilmember Yukimura: It is costing us right now five (5) times one million three hundred dollars (\$1,300,000)?

Mr. Bailey: Probably just shy of that because one million three hundred dollars (\$1,300,000) is today's cost.

Councilmember Yukimura: So that is at least six million dollars (\$6,000,000).

Mr. Bailey: Yes. Just to put things sort of in perspective, the County of Honolulu asked for an ambulance last year and their request was for two million five hundred thousand dollars (\$2,500,000) for the same service.

Councilmember Yukimura: Yes, because they are servicing one million (1,000,000) people, we are servicing with de facto visitor population about ninety thousand (90,000), right?

Mr. Bailey: The marginal difference between the numbers of calls they run and what we run is not where the cost is incurred, but I just wanted to give you that perspective because often you give people the figure and there is no reference point in terms of the comparison.

Councilmember Yukimura: The cost, which is very onerous for us, is we are a spread out low density population.

Mr. Bailey: That is correct.

Councilmember Yukimura: So we are trying to cover a large area, but there is not that many people in the area as compared to a city.

Mr. Bailey: That is definitely correct.

Councilmember Yukimura: Davis, California has the same population we have and they have two (2) fire stations and we have, what is it eight (8)?

Mr. Bailey: Just by comparison what I would tell you is that if I put an ambulance in Honolulu, it would be one million three hundred thousand dollars (\$1,300,000). If I put one in Maui, it would be one million three hundred thousand dollars (\$1,300,000), same as the Big Island. That is our cost.

Councilmember Yukimura: Right, but you might need more one million three hundred thousand dollars (\$1,300,000) cost centers.

Mr. Bailey: Certainly, there are twenty (20) ambulances on O'ahu for the one million two hundred thousand dollars (\$1,200,000).

Councilmember Yukimura: Okay.

Council Chair Rapozo: We have to take a caption break in about four (4) minutes. If we have a lot more questions for them, we will take the break, and then come back. If we can finish this up, we can go straight.

Councilmember Yukimura: That is fine. Let us take a break.

Council Chair Rapozo: Okay. We will take a caption break. Ten (10) minutes.

There being no objections, the Council recessed at 10:27 a.m.

The meeting was called back to order at 10:39 a.m., and proceeded as follows:

Council Chair Rapozo: I will call the meeting back to order.
Councilmember Yukimura.

Councilmember Yukimura: My other question actually involves the Fire Department, could we get someone from the Fire Department?

Council Chair Rapozo: We will bring them up after.

Councilmember Yukimura: Because my concern, which I have expressed very clearly during budget is about the overlap between our Fire Department and I did ask the Fire Department to tell me what is the cost of Emergency Medical Service response from the Fire Department. I think the taxpayers are concerned about the overlapping services and the huge costs that are being incurred from both well-intended, highly professional respondents; the Fire Department and AMR. I have this concern, that is why I would like the Fire Department to come forward.

Council Chair Rapozo: We will obviously allow the Fire Department to come up, but I do not see the relevance because it is two (2) separate functions. It is not so much AMR, but EMS throughout the State, thank you for that correction.

Councilmember Yukimura: Thank you, too.

Council Chair Rapozo: That is paid for by the State.

Mr. Bailey: That is correct.

Council Chair Rapozo: And obviously, the Fire Department, which provides the first responder very well on Kaua'i, I must say, is funded by the County. This is to supplement the ambulance stations on Kaua'i by adding one (1) more ambulance which obviously will alleviate some of the stresses on the Fire Department.

Mr. Bailey: I would add that there is precedent for this on Maui and the Big Island where the County and the State and on Maui, in particular, ourselves; AMR, collaborate on the medivac here and the County puts in funds and the State puts in funds and we operate that. We have been doing this for a dozen years now. Through a Memorandum of Agreement (MOA) between the County and the State, the moneys transferred to the Department of Health to run those services, so this collaboration is being done today.

Council Chair Rapozo: I am just speaking for myself, I do not want the County to be responsible for the EMS on Kaua'i, at this point. That is not something I want to get involved with. I think the way it is run now, on Kaua'i, I can only speak for Kaua'i because I do not really care about the other islands, but on Kaua'i, it works well.

Mr. Bailey: It does.

Council Chair Rapozo: And yet there is that shortage. You have five (5) ambulances and if there is a major accident, you take two (2), possibly three (3) out of there, and then you get one (1) or two (2) servicing the island. It is really to supplement and if we can get the State support on this, it would help.

Councilmember Yukimura: There are five (5) ambulances right now, so it would be six (6)?

Mr. Bailey: That is correct.

Councilmember Yukimura: And then we have eight (8) fire stations, which often both you and they are responding.

Mr. Bailey: That is correct.

Councilmember Yukimura: And I understand in some other Counties, the fire department does not respond to every medical incident and to me that would make sense if there could be coordination. I also think that our effort to go to the

legislature to get funding would be much more favorably received if there were a better integration of response and service. These are thirteen (13) highly expensive centers of response and eighty percent (80%)...I may be wrong, but a high percentage of fire departments responses are medical responses. That is why I am asking about this because when we go before the legislature if they are worth their money, they will be asking the same questions.

Mr. Bailey: I hear your concerns. EMS really, if you see one (1) EMS system, you have seen one (1) EMS system. I can tell you that throughout the State, every EMS system is a little different in some of those dynamics that you just mentioned. It is true on O'ahu, they do not go one hundred percent (100%) of the ambulance calls. They go on the ones that are triage out in certain circumstances when ambulances are detained and not able to respond and inpatient conditions where it warrants having both departments responding. On Maui, it is very similar in like and very much so on the Big Island, which is the fire service, EMS is integrated, so they have their own protocols of when they ascend their engines and their ambulances. It is very prevalent across the Country wherever city and whatever counties, they have different models. I am here to answer any questions. I believe Kaua'i has a very well integrated system. It is true that they run probably on every call that we respond to, which is a little different than the other Counties and you made mention of that. The benefit is for the patients that are getting thirteen (13) response apparatus from different parts of Kaua'i versus five (5) ambulances or eight (8).

Councilmember Yukimura: How does a population like us sustain that cost?

Mr. Bailey: I do not know if I have the answer to that, but I can certainly respond to any EMS part of that equation.

Councilmember Yukimura: It sounds to me that the way to discriminate in terms of which ones to go to and which ones not to go to or which ones need both or which ones need only one would be largely in the dispatch operation. It would require a level of expertise and training that might be perhaps more cost effective in terms of putting money there and then developing a system that is integrated.

Mr. Bailey: There are systems like that. I will just add that the dispatching of these services on Kaua'i is through the Police Department, so you are adding another agency into this mix.

Councilmember Yukimura: No, why can you not upgrade the police dispatch center?

Council Chair Rapozo: Listen...

Mr. Bailey: No, you could.

Council Chair Rapozo: Hand on. Again, we are going into policy. This request is for funding for an ambulance. I understand what Councilmember Yukimura is going through and what the questions she is having. I am not sure where she is going through with it because our firefighters are not paid by the hour. They

do not get paid by the call. They are paid by salary. You pay fuel when you go on a call. I have to say this because I just ran into a lady last night who was one of the biggest opponent of the helicopter, when Kaua'i came up with this plan to purchase a helicopter. She self-admitted, "I thought the Council was wrong," until last week when she broke her ankle up in Alaka'i Swamp and last night I saw her and she said, "I tell you, I was wrong." I say that because...if you are going to cut funds...the patient that needs that medical service, when they see the red truck versus the white ambulance, they are happy. They are getting the treatment. Our Fire Department, the rescue people are not trained and equipped to do what the ambulance does. They are two (2) separate entities. I understand that you want to cut costs, but I do not see the relevance to this discussion because this is to add a new ambulance. As far as how the County and Fire Department wants to run in conjunction with the EMS, that is their call. That is not your call. You folks are here to...

Councilmember Yukimura: That is why I asked to have the Fire Department.

Council Chair Rapozo: And I said that we would bring them up after we questioned these men. If you have question, as it relates to the ambulance here, not how they interact with the Fire Department, we can ask the Fire Department.

Councilmember Yukimura: Well the interaction takes two (2) entities and I am asking for some design thinking in terms of the services that are in two (2) agencies, but I am asking for out-of-the-box thinking and design and cooperation that might give the people of Kaua'i a better designed service and more cost effective. Yes, the helicopter may be a very important service to have, but the type of helicopter that we bought could have been much more cost effective. That is what I am talking about, what is the most cost effective designed service that...and do not be in silos, that is my job, that is their job, and we are not going to talk or we are not going to look at a new combination or possibility so that we can give taxpayers better service for their money.

Council Chair Rapozo: Your contract is with the State.

Mr. Bailey: That is correct.

Council Chair Rapozo: Not the County.

Mr. Bailey: That is correct.

Council Chair Rapozo: So we would have to fit our design to your operations here on Kaua'i, if we wanted to share responsibilities and so forth.

Councilmember Yukimura: Not necessarily, Council Chair.

Council Chair Rapozo: You know...

Councilmember Yukimura: Two (2) agencies could get together, cooperate, and design the system.

Mr. Bailey: I hear your concern and I am here to answer questions. I want to tell you that we do have collaboration discussions with the Fire Department and talk about design.

Councilmember Yukimura: Good.

Mr. Bailey: Tito sits within their EMS Committee to talk about going forward.

Councilmember Yukimura: Great.

Mr. Bailey: So we are looking at those things. Your concerns are noted. I think we have heard it in your budget hearings and in our discussions with you, and so it is what we do as a private provider in the State of Hawai'i is to work with all these agencies to find out the best and the most efficient use of dollars. When I compare Honolulu's cost against our private cost, it is a significant savings and dollars and that is not your *kuleana* necessarily, but I say that because I believe that in EMS, Kaua'i is getting best value and best quality for what the State is paying for services. Okay, the whole integration with the Fire Department as they think forward, is a worthy discussion that we should be having and we are having now off-line, if you will. Your concerns are noted and it is not any different than the same discussion that might be happening in San Mateo, Seattle, or Arizona. This is the EMS conundrum and healthcare conundrum going forward.

Councilmember Yukimura: Well, I think it might have been Tito who told me, and I also read in the paper about the system that is actually now looking at the causes of people needing emergency medical service and finding out that a chronic few are the ones that are causing a great part of the cost of the system. Now the work with, whether it is fall prevention in the home or that kind of thing, with the chronic few is really cutting the service needs and that is very creative thinking. That is what I am hoping we are going to do jointly to get the most cost effective services and my measuring stick is the cost per capita.

Mr. Bailey: Thank you. That is happening. The injury prevention discussion in collaboration again with the Fire Department where we are working together, because injury prevention is the front-end of the EMS situation. So, the more we can do to mitigate chronic disease, traffic mishaps, falls, or whatever through education and environmental strategies, I think the Fire Department is well documented in doing that for fire prevention, and we are doing it in EMS. That helps to alleviate unnecessary use of ambulance service, unnecessary use of emergency rooms and then better care for those that need it. We are all onboard with that concept. Thank you.

Councilmember Yukimura: That is the same goal I am speaking of underlying my question about how you can better integrate. Thank you.

Council Chair Rapozo: Thank you. Fire Department, are you folks prepared to discuss this today? I apologize, this was late notice. Oh, the Chief is here. That was perfect timing, Chief.

ROBERT F. WESTERMAN, Fire Chief: You are welcome, Chair. Thank you. For the record, Robert Westerman, Fire Chief.

Council Chair Rapozo: Councilmember Yukimura.

Councilmember Yukimura: Chief, we had a piece of this discussion at budget session, but there are five (5) emergency medical centers on this island, or response teams or whatever you want to call it, and eight (8) fire stations that also respond to medical emergencies at different modes or different levels. One emergency medical station is one million three hundred thousand dollars (\$1,300,000), annually. I asked Lieutenant Vaughan what the cost of our emergency medical services are. I do not know if you have the figure off the top of your head, but if it is eighty percent (80%) of our calls are...I do not remember the exact figure, but it was something like that, are emergency medical calls. Is that eighty percent (80%) of the Fire Department's budget?

Mr. Westerman: No, it would be nice if it was a simple eighty percent (80%) number.

Councilmember Yukimura: Right. Is it fifty percent (50%)?

Mr. Westerman: Well. We have never evaluated exactly what every call cost us, per call/per call time. You are right, about eighty percent (80%) of our calls are medical calls, but the cost of a medical call is a little cheaper than the cost of a fire call. The amount of people that respond are different, the total number of people that respond are different, and the amount of work effort that is put in is different. We have not done that type of analysis. It is just part of our response mode that we respond to all medical emergencies, as the first-responder units, prior to the ambulance arriving, which is a higher level of care. We talked about that in budget about improving our next level of care to make it a little higher, but we still do not have Mobile Intensive Care Technicians (MICTs) and state certified Emergency Medical Technicians (EMTs), and so the ambulance responding is still a requirement of the job. Occasionally, we cancel them, but that does not happen very often.

Councilmember Yukimura: Yes, and we have fire engines responding to emergency medical calls.

Mr. Westerman: Yes.

Councilmember Yukimura: Which is very expensive.

Mr. Westerman: Yes.

Councilmember Yukimura: And necessary because we also have to have firefighters and availability, but I think it is time to think about a different delivery model. You, in fact, told me about a model of a nurse in a car going to respond. I think it was in Santa Clara, California, for certain kinds of emergencies. I am just asking and I hear that there is already some beginning of this and I am really glad if there is, but I believe that when we go forward on this very worthy quest to the State legislature, they will have those questions too. The better our responses are and we can show that we are really coordinating, where we have been upgrading our

dispatch, if that is the area that is going to help us respond better, that will help us in our cause to get more moneys for emergency medical.

Mr. Westerman: I agree to all the above and all the above is not tomorrow. All the above is in the near future and some of it maybe in the farther future.

Councilmember Yukimura: Absolutely.

Mr. Westerman: I could not agree with you more. I think we need to find a better more efficient way to respond and still provide the same level of service that we are providing today. How does that model look? We worked with our strategic planning committee and looked at several models nationally. Community-based paramedicine of which you are talking about and other services programs other than fire ambulance responding, but they are actually still part of the network. They are either part of the ambulance service in this case they are separate on Kaua'i, or they are part of the Fire Department. Yes, we would like to be there sooner than later, but it is very challenging day-to-day just to make ends meet with the budget and then try to figure out how we can work that into our strategic plan and move it forward. Working with our partners at AMR, working with the State Department of Health, I do not think there is anybody up there who does not agree that maybe our model is a little stiff and maybe there could be some flexibility in it. Then again, even AMR and Kaua'i Fire Department in and of themselves, do not have the power to make that change. We can make some recommendations and steer some committees to move that way in the future and I think we are, but we just do not have that power to do it today.

Councilmember Yukimura: As a member of a policy body that is also a budget body, I am making that request.

Mr. Westerman: Good.

Councilmember Yukimura: Because I think as policymakers, theoretically we have the power are interested in a new model because of the challenge of servicing low density spread out population and the increasing cost, we have to find some new models. I am very thankful that you are already starting to talk about it and look into it. It is easier for me to support something like this knowing that the system is responding to change and to modernization. Just to slap another additional unit on a system that needs some modernizing, would be harder.

Mr. Westerman: I would be remissed if I did not say that this is not because we need to modernize the system. This is simply because we have grown and our partners have a need to have another ambulance. Their call load is of that level that they need that extra support. We are here to support them saying that they need this additional ambulance and they offered all types of versions in last year's legislation and we kind of know what happened last year. We all got slapped because every County has the same problem and they all went in at the same time saying, "Hey, we all have to have an increased level of service," and the legislature said, "Hey, wait a minute. Let us find ways and let us make sure we are doing it right. Let us try to establish some priorities. You, as a group, talking about the State, trying to come up with a plan on how we can systematically go through the system and

improve it where it needs to be improved.” It is not just that we are not antiquated, we are just undersized. Again, the models, I would like to always go back and talk about the models, we have to be very careful. We are a very unique model. You cannot take a model out of some other city and town in the mainland and plop it right here on Kauaʻi because we are very unique in that we do not have any mutual aid agreements. If you go to a city in New Mexico, they might not be very big, fire department wise, and the city same in our size, but that is because the nine (9) cities that are around them are including the counties provide that additional service that we get and the only way we can get that is providing fire and ambulance at the level that we provide. It does get a little more expensive only because the only way to provide the service is to provide more bodies because we cannot just call on Honolulu to come over and respond to a call. This is part of the dilemma that AMR is in, which is we have gotten big and their model says in order to provide the service that the State wants them to provide, they are saying we will need another ambulance to do that. Can we relieve some of that and I think we do by being able to get there sooner for them in some cases, but should we be the panacea to replace it? At this point, we are not ready.

Councilmember Yukimura: Nobody is asking for that. I am asking for a mutually tailored design for Kauaʻi after you do all the research about how other places are doing it.

Mr. Westerman: Yes, thank you.

Councilmember Yukimura: And because we cannot respond to the growth just by adding units, we need to find a way to respond to the growth cost effectively. Thank you very much.

Mr. Westerman: Thank you. I apologize, I am getting ready for travel. Junior Lifeguards are competing this weekend and we are taking everybody over to the Oceans Safety Conference, which by the way thank you for passing the Tort Liability Bill because that would be the number one item on our agenda as the County’s meet to discuss the tort liability sun setting again.

Council Chair Rapozo: We have to reel this back in. We are going all over the place, but I appreciate that. We had discussed that. Any other questions for the Fire Department? I appreciate you coming, Chief, and I am trying to get us back on track.

Councilmember Yukimura: Thank you very much.

Council Chair Rapozo: Good luck with the junior lifeguards. Any public testimony? Do we have any registered speakers?

Ms. Fountain-Tanigawa: Council Chair, we have one (1) registered speaker, Anne Punohu.

Ms. Punohu: Aloha Chair, my name is Anne Punohu and I want to support all of the testimonies so far. I have something personally I want to say from the standpoint of the public. I want another ambulance on Kauaʻi and I do not care what it costs. I do not want to hear about how much it costs to save a life.

When people respond, these first responders respond whether it is the ambulance or the Fire Department or a nurse in a car, nobody is going to sit there and calculate the cost of gas, the cost of what it cost to drive that vehicle there, or what is actually costing to do their job. They are there to help people regardless of where they live on the island, or what their social economic condition is or what is causing them to be called such as a fall versus something else. When we start getting into policy, where we may be looking at different kinds of peripheral services, which may impact somebody's care based on social economic conditions or where they live or what the situation is. We are getting into extremely dangerous water. You cannot compare the needs that we have on our island to other places on the mainland because as you heard, they can call fifty (50) other people from fifty (50) other states to come and help them and we do not have that option. We are on an island. We need the amount of the services that we have. We need the eight (8) stations because of our ocean conditions, we have invited more tourist to come here, and we have all types of situations at Nā Pali Coast. When the ambulances are busy and the Fire Department is busy dragging people out of the water, mostly visitors, and a local person is up in Wailua who is having a heartache, what do you do when all the ambulances are out? Would one (1) more come in handy at that point in time? Which is more important? There comes a point where costs does not trump life. *Mahalo*.

Council Chair Rapozo:

Anyone else? Mr. Mickens.

Mr. Mickens: Thank you, Council Chair. For the record, Glenn Mickens. I just want to sincerely thank these people for the great job that they do. I had a slight motorcycle accident a few years ago, they were there in an unbelievable amount of time. They took me to the hospital, Dr. Downs sewed me up, and did a great job. They are doing their job, whatever it cost; I think they are worth it. I am not quite sure they have to have the big fire engine if it is a medical emergency thing all the time following them. I am not sure why that is. There must be a reason. I just want to make sure that I thank these people and whatever the cost is, is well worth it. Thank you.

Council Chair Rapozo:

Anyone else? Mr. Hart.

Mr. Hart: For the record, Bruce Hart. I want to echo what everyone has said. Although I would like to point out that the Chief was quite clear that he is looking at cost effective models. In other words, that is on the plate and it is always on the plate. That is good. We need to move towards that, so I am in agreement with Councilmember Yukimura, but I am really on agreement with everybody on this. We just need to keep moving forward to make it more efficient, but right now is right now. We need to deal with the situation today and not create a situation where we do not have the services necessary to take care of the public. Thank you.

Council Chair Rapozo: Anyone else? Chief, can I ask you to come up again? Maybe I am missing it; I do not know. There was a time that the Police Department responded to every medical call. When I was in the Department, we responded to every single medical call and because back then there was only eight (8) beats, and now you have ten (10), because those medical calls took the officers away from the street for other calls. There was an administrative decision made to say, "Unless it is a crime or a traffic accident, they will respond, but if it is a heart

situation, the police officers will not respond unless requested.” It was not done to save money. It was more because of the availability of officers. You were taking them away from other situations. My question is, if tomorrow you said, “Hey, no more responding to medical,” what would be the savings to the County?

Mr. Westerman: None.

Council Chair Rapozo: That is my point. I am not sure where this is going, but...maybe the fuel, like I said earlier.

Mr. Westerman: Maybe the fuel cost.

Council Chair Rapozo: Like you stated earlier, your function is different from the medics. They are the ones that are certified, so for you to say, “We are not going to send them out,” there is no real savings to this County, correct?

Mr. Westerman: Correct. Like you said, the cost that would cost us in fuel to drive to each location would really be the only significant savings. In fact, we have set some policies where we do not respond. An example is the boat when it comes in, because the patient is under doctor’s care when it comes in, it is more of a transfer than us...

Council Chair Rapozo: Are you talking about the cruise ship?

Mr. Westerman: The cruise ship, I am sorry, yes. Almost every single time when those cruise ships come in, we would be down just standing there helping AMR move a patient, we do no-patient care, and AMR was usually there in time, but they are already under doctor’s care.

Council Chair Rapozo: Right.

Mr. Westerman: And some of the clinics, depending on the call, we work with them to not call the Fire Department because there is no need for us to be there if you are under doctor’s care and you are going to do a transport from a clinic to the hospital. Therefore, they do not call 911 for an emergency now. We have done a few of these things, but that is limited, but an attempt to try to reduce that. We did work with the Police Department and give them Automated External Defibrillators (AEDs) so they have AEDs or they did have AEDs in all of their vehicles and were train in case they need to use them. In case they happen to be in a park or something and they can respond to that and have an AED available.

Council Chair Rapozo: Thank you. Councilmember Kagawa.

Councilmember Kagawa: I think I know the answer, but can you answer Mr. Micken’s question on why we take the large fire truck to every response.

Mr. Westerman: Again, it is crew integrity. If we just sent two (2) people to the call and they went out to the far-end of the district, we had a fire call, we would get there without enough people in order to provide safe operations for a fire call. Again, if they are on the far-end of the district on a call and then the engine has to come later, then you have two (2) people there without really anything

other than a small truck with a little bit amount of water to provide any support. It is all about crew integrity and keeping the crews together when we respond to calls.

Councilmember Kagawa: For a subsequent call. If a subsequent call comes, you have the truck there to go to the next call.

Mr. Westerman: We do that, especially in District 1, where we have some of the most calls and is the largest district. They will break apart as a crew more often than anybody to go to another medical call if in fact the ambulance tells us, "We are bringing the second ambulance in from"...it might even by Kōloa, then we will break our crew apart only to provide that lifesaving support for that little bit amount of time.

Council Chair Rapozo: Thank you, Chief. I will call the meeting back to order. Any further discussion?

The meeting was called back to order, and proceeded as follows:

Council Chair Rapozo: I just want to say that this is really about adding another ambulance on Kaua'i due to just growth. We have outgrown the system that we have. That is what this is all about. The internal policies between the Fire Department and ambulance, again, I do not think this affects the Fire Department at all because their call rate to medicals are eighty percent (80%). That is just one of those things...you cannot run government like a business in all cases because if we did that, we would probably have two (2) fire stations or three (3) fire stations. You cannot operate like that because you have all the issues and situations that require public safety. That is just one of those things. Anne, you hit it right on the head. What is it? One (1) more ambulance paid for by the State; that is what this bill does. It is paid for by the State. If you get a red truck pulled up with that ambulance that is more power to the victim or patient that needs that help. I remember as a cop watching that fire truck always get there before the ambulance pretty much eighty percent (80%) of the time, seventy percent (70%) of the time because there were just more of them than there were ambulances. The way they perform...even today, when they come up at the hotel to assist our guest who get hurt or sick. It is the Fire Department that typically gets there first. That extra two (2) or three (3) minutes could save a life. We are blessed that as a byproduct of our fire program, we get that to assist with the EMS. It is just one (1) more ambulance, paid for by the State to address the need because of our growth. I hope we can get this passed and get this to HSAC. Councilmember Kagawa.

Councilmember Kagawa: I want to piggyback a little bit on that. I think some discussion has been made about why the State does not send the services of EMS here to this County. I think the argument has been made by the Counties that that is a great idea, but what the State needs to do is if they want to push that forward, they need to fund not only the salaries, operations, and moneys, but the retirement contributions as well. There was talk about the State giving more in a form of TAT, or what have you, to cover only salaries and operation and the Counties would be paying for retirement. To me, I think that would be a very unfair deal for us. We get more responsibility without getting the full cost that the State collects the most money as far as tax revenue and they have been handling that situation for all

of these years. If you are going to give a fair deal in a sake of better efficiency, at least give us the fair share of funds. Thank you.

Council Chair Rapozo: Thank you very much. Anyone else?
Councilmember Yukimura.

Councilmember Yukimura: You say it is one million three hundred thousand dollars (\$1,300,000) year after year after year, but is State money. Yes, it is State money that we could ask for, for affordable house. It is State money that we could ask for an adolescent drug treatment, there are so many needs. The responsibility is still there to make sure that it is cost effective. I am not talking about cutting services. I am talking about how we provide, as the Fire Chief said that, the same level of services that we are doing today, but do it in a more efficient cost effective way. Use technology, use whatever and there is another way. Right now, we have a Fire Department that is design mainly for fire response and that is twenty percent (20%) of the response. Maybe we need to design it more for emergency medical, first responder if that needs to be done, but if you have six (6) ambulance stations, can they also do first responder? Is there a way of doing first responder more cheaply? Even though it is State money, it is the same taxpayer. We have to be thoughtful, efficient, and innovative in how we do the response. That is all I am asking. I hear a really positive response to that. I see that there are efforts to already begin to do that and I am very grateful.

Council Chair Rapozo: Thank you. Any other discussion? I just wish we applied that same scrutiny to transportation expansion. When we have those discussions on the expansion of our bus system, this level of scrutiny does not exist. This one is for public safety and ambulance. I am surprised at some of the discussion, but it is what it is. I think we desperately need another ambulance. I also believe we desperately need another beat on the police force, but this one is State. It is State funded and it is an opportunity that the State can get behind and we can eventually catch up to the need in our EMS system on Kaua'i.

The motion to approve C 2016-177 was then put, and carried by a vote of 6:0:1
(*Councilmember Chock was excused*).

C 2016-178 Communication (07/22/2016) from Councilmember Yukimura, transmitting for Council consideration for inclusion in the 2017 Hawai'i State Association of Counties (HSAC) and County of Kaua'i Legislative Packages, a proposed amendment to Section 76-77, Hawai'i Revised Statutes (HRS), that would exempt from civil services positions of non-elected chief executive officers or heads of the executive branch of county government. This would facilitate a Council-Manager form of governance should the people of a county choose to institute that form of government: Councilmember Kualii moved to approve C 2016-178, seconded by Councilmember Yukimura.

Council Chair Rapozo: Councilmember Yukimura, did you want to explain your proposal?

Councilmember Yukimura: In considering the Council-Manager form of government, we discovered that there is a problem with the State's statute governing civil service and, at least as presently worded, it requires the County Manager to be

in the civil service process and that is contrary in its core functioning to the Council-Manager form of government. Therefore, to enable us to consider a Council-Manager form of government, I am proposing this. This does not require a Council-Manager form of government; it simply enables it for any County that wants to put this on the ballot.

Council Chair Rapozo: Councilmember Yukimura, on your amendment, it states, "Positions of non-elected chief executive officers or heads of the executive branch of county government," which would be the County Manager? Would that be the executive branch?

Councilmember Yukimura: I think it would be either.

Council Chair Rapozo: I do not know if the County Manager would fall under the legislative branch.

Councilmember Yukimura: No, the County Manager is an executive.

Council Chair Rapozo: Okay, so this covers that?

Councilmember Yukimura: Yes.

Council Chair Rapozo: Okay. Any other discussion before I call for public testimony? I will suspend the rules. Do we have any registered speakers?

(Councilmember Chock was noted as present.)

There being no objections, the rules were suspended.

Mr. Mickens: For the record, Glenn Mickens. Thank you, Council Chair. I really want to compliment Councilmember Yukimura for keeping this issue alive. I had a lot of people call me and talk to me expressing their bitter disappointment in not being able to vote on this County Manager issue not going forward with it. There has been a lot of time involved in this thing, but again, I really appreciate Councilmember Yukimura pursuing it, keeping it alive. I think it is an extremely important issue. I have not heard anybody offer an alternate means of taking care of the problems on this island. We offered this issue, obviously, and I think it would work. It has worked in the rest of the nation. This technical legal issue on it, I think Walter Lewis addressed it very well. I think it could have been easily addressed if that was the roadblock, but I think there was some other extra circumstances prohibiting it. I hope that it is not a day late and a buck short, but we do keep trying to continue this. Thank you.

Council Chair Rapozo: Anyone else wishing to testify? Seeing none. I will call the meeting back to order. Further discussion? Councilmember Kuali'i.

There being no further testimony, the meeting was called back to order, and proceeded as follows:

Councilmember Kuali'i: I will just say that in the response earlier from the Deputy Attorney General, they had basically recommended this. It is a long way

to go, but it is a start. The legislature would actually have to take action and amend the Hawai'i Revised Statutes (HRS).

Council Chair Rapozo: Any other discussion? Councilmember Kagawa.

Councilmember Kagawa: Thank you, Council Chair. In your absence on a few occasions at HSAC, we have discussed the County Manager. As an update, on the various Counties, Maui had considered it. We had considered it and we have had several brief discussions on where we were at and what the members had thought about it, therefore, this is nothing new for HSAC. You have been there on occasions where they have talked about it as well, as each County has an opportunity to talk about current issues before them. Those are the moments when we have talked about it; therefore, this is nothing new. It allows us or future Councils that may want to take up this issue to put it on the ballot, at least will put up something to the voters that can work the way intended and not put it on, maybe get it to pass, and when problems occur, we find out that the Council cannot control the hiring or firing of the manager. Thank you.

Council Chair Rapozo: Thank you. Any other discussion?

The motion to approve C 2016-178 was then put, and unanimously carried.

C 2016-179 Communication (07/25/2016) from Council Vice Chair Kagawa, transmitting for Council consideration, proposed amendments to Chapter 19, Kaua'i County Code 1987, as amended, to make legal both the consumption and purchase of alcohol/intoxicating liquor beverages throughout the entirety of the Wailua Golf Course: Councilmember Kagawa moved to receive C 2016-179 for the record, seconded by Councilmember Kualii.

Council Chair Rapozo: Any discussion? This will be taken up probably in the next few minutes in Bills For First Reading, therefore, if you want to testify on this communication, we will connect it with the Bill. If you want to testify now, you can, and if not, you can wait for the Bill. Councilmember Yukimura.

Councilmember Yukimura: Does anybody know the rationale for this?

Councilmember Kagawa: I do.

Councilmember Yukimura: Okay.

Council Chair Rapozo: Councilmember Kagawa.

Councilmember Kagawa: Currently, if you go to the golf course, we have a large bullet board for all golfers that pertain to rules on the course and gives notices of big upcoming events. It is located right in between both the men and women's restroom. There is a large sign that cites our County ordinance that says any consumption or use of alcohol is prohibited on the course. As a golfer, it is common knowledge that people bring their own beer and consume on the golf course. There is no one that monitors or checks it. I guess if there were ever a case where the alcohol is promoting detrimental behavior on the course, I am sure the management or

starters would go out there on the course and try and fix the problem. Alcohol is already used, the sign is ignored, the rules are ignored, the law is ignored, and what looks on the outside is that we are promoting alcohol use on the course. I think this Bill will actually reduce alcohol use on the course because what will happen is if we have a vendor, like on a private golf course, serving alcohol to paying customers, they will monitor the illegal alcohol users because the law prohibits the use of alcohol, and you will not be able to bring your own beer later. We talk all the time about, "Subsidizing the course one million five hundred thousand dollars (\$1,500,000) and this has to stop. Why is the County subsidizing golf?" The fact of the matter is that the County subsidizes all sports: baseball, football, soccer, you name it, tennis. Nobody breaks even when it comes to parks and recreation, but I think what we can do is we can increase the amount of visitor play and that will add greatly to the revenue. I believe we have by far the greatest public golf course in the State, if not, in the Country. The play there is relatively slow if you look at times after ten o'clock (10:00). The question is, are we missing out on visitor golfers that want to have a few beers on the course and are not bringing it thinking and go to Kiahuna Golf Club, Puakea Golf Course, or Kaua'i Lagoons Golf Club? All of the competing courses on Kaua'i have alcohol beverage carts. The vendor there is struggling and has asked. People come up asking, "Can I buy alcohol," when they make their pit stop after the 9th hole. In order to drink alcohol, they have to consume it inside the restaurant. This will allow the vendor to now have a beverage cart. Whoever the vendor is, I think it may have to go back out to bid as far as who will serve it, so this will come later on down the line. I do not know if it will come down in 2018 or what have you, but I see this as a solution to try to increase more play from the visitors and that way it will reduce the subsidy that the County makes to the golf course. If we get more of the visitor play, I believe we can significantly cut into that deficit that the County pays into the golf course. Why would a visitor not want to play on the best public course in the State? The fact of the matter is that we do have a lot of play, but I think there are a lot of opportunities for golfing that we are missing. This may be one of the big reasons why. That is just my...I proposed a bill based on a request. Myself and Councilmember Chock had worked with the vendor, we see it as a legitimate request and I think the public should chime in and tell us what they feel. If you look at what is currently happening, the illegal consumption of alcohol on the course, then I think what we need to do is if we want to stop that, we need to at least hire a marshal for the course that can monitor that. I do not think any abusive behavior is happening now. I think people basically are controlling themselves out on the course and so I am kind of mixed as to whether we need to hire a marshal at this time. This is just an option, an option to look at how we can reduce subsidy to the golf course because I believe that the visitor play can be significantly increased. Thank you.

Council Chair Rapozo:

Councilmember Yukimura.

Councilmember Yukimura: Thank you for the explanation and so it sounds like this is standard practice at most golf courses, so that is what you are proposing to institute at Wailua, a standard practice for allowing alcohol. Do you know whether these are done at other public golf courses around the State?

Councilmember Kagawa: Not to my knowledge. The public ones that I have played at when I was in college at Honolulu, Ala Wai Golf Course and Pali Golf Course, same thing happens, you bring your own beer in a discrete way.

Councilmember Yukimura: I see.

Councilmember Kagawa: It is like drinking at parks. It is illegal, but people do it and as long as they are responsible...

Councilmember Yukimura: It is not standard practice for public golf courses, but it is for private golf course and you are suggesting that they would be an appropriate practice for Wailua?

Councilmember Kagawa: I have not decided on my final vote, but I want to see what the public feels.

Councilmember Yukimura: I see.

Councilmember Kagawa: Are we giving Wailua Golf Course every opportunity to spread the use of that course to all of the visitors to come here to golf? I think we are missing a segment of it that enjoys recreational golf and consuming alcohol.

Councilmember Yukimura: Okay. Thank you.

Council Chair Rapozo: Any other discussion? Councilmember Hooser.

Councilmember Hooser: Is there somebody from the golf course that will be here to answer questions?

Councilmember Kagawa: I think someone will be here at the Committee Meeting. I will have everybody here that the Councilmember want.

Councilmember Hooser: I guess my question is about capacity. The suggestion is that we want to increase visitor play. It was my understanding that it was already at capacity and locals were having trouble getting on there some times. Do we have openings?

Councilmember Kagawa: A lot of openings.

Councilmember Hooser: Okay.

Councilmember Kagawa: On the weekdays after ten o'clock (10:00), it is wide open. For a beautiful course such as Wailua, that everybody praises, it is pretty sad now that our visitor totals are so high. Part of the reason is that we have some great private courses at affordable deals like Puakea Golf Course, Kiahuna Golf Club, and Kaua'i Lagoons Golf Club. It is a tough market, but I think that Wailua can increase its play. The negative affect on the other courses is also a consideration, so it will be interesting to see what the public feels about this.

Councilmember Hooser: Was there any investigation in terms of risk assessment or additional liability for the County, that kind of thing from alcohol?

Councilmember Kagawa: Well, Jenelle from Council Services has done some research and you can check with some of the documents that she gathered from the various agencies, but basically we allow alcohol consumption at the Kaua'i Memorial Convention Hall and we are just adding Wailua Golf Course to that venue.

Council Chair Rapozo: I believe the concessionaire would have to produce the liability insurance with that added liability and would have to release the County, I would assume. I think I read that in Jenelle's E-mail.

Councilmember Kagawa: If I missed anything significant or if I am way off base, Jenelle can correct me. Not right now. Okay, she can correct me later. I just gave what was off the top of my head of my feelings of why we came to this option. It is not a solution because it is not approved yet. It is just an option.

Council Chair Rapozo: The other thing is that it would not impact the current vendor because according to the Procurement Office, it would have to go through a whole new procurement process. The current vendor has inquired, but this would not be available to anyone until the next bid for that contract. I think that is important.

Councilmember Kagawa: Can I add something?

Council Chair Rapozo: Yes.

Councilmember Kagawa: That large sign that says it is illegal to consume alcohol on the course, and a lot of alcohol is consumed on the course currently. For the visitors who want to play and would enjoy their experience more, and the potential ones who are not coming because we do not have the amenity, I think we are losing out on a segment of that and that should be a consideration.

Council Chair Rapozo: No more discussion. Is there anybody registered to speak? Anyone wishing to speak? Mr. Mickens.

There being no objections, the rules were suspended to take public testimony.

Mr. Mickens: Thank you, Council Chair. For the record, Glenn Mickens. I have to disagree with my friend Councilmember Kagawa. I think the police have enough problems with driving under the influence (DUIs) to try and increase the use of alcohol anywhere. I know I am in the minority. I am a teetotaler, have been all my life. I just do not see the use of alcohol or any drug anywhere in a means to increase participation at a place. If somebody wants to play golf, I do not think they have to worry about whether drinking or how much they are going to be drinking, but for me, I just see it as another means of people doing something that...I never drank, but I understand that one (1) beer is enough. There is enough alcohol in that to have an impact on your coordination to stop a car in time. To increase it just for the sake of having more people at the golf course, I would be against it. Thank you.

Council Chair Rapozo: Mr. Hart.

Mr. Hart: For the record, Bruce Hart. I have serious concerns. The County and the government is held to a greater standard, a higher standard than the private sector. The private sector has their own issues in regards to liability. The County has a whole different set of issues. For the County to lend approval to drinking on a golf course, do we become then the County, the de facto social host. There are social host laws and are there for a reason. It just seems to me that the County again lending approval to drinking on a golf course, for instance, what is going to happen if an intoxicated individual runs over with a golf cart another person? But I think the most serious issue to me is one that is not limited just to this, the golf course. This issue has come up in my own life in regards to social host laws, people drinking wherever it is, usually at private parties within residential neighborhoods and then they get in their motor vehicles and drive away. I personally have witnessed on dozens of occasions people drinking on public parks and then driving away. The fact that we do not have the adequate resources to enforce what is an obvious illegal act at the golf course is not reason to make it legal. I think also of what kind of message it sends to our youth in regards to this drug, alcohol, and how in my opinion and experience that alcohol is the gateway drug to our youth. It is often almost always the first drug that they experience as they are growing up. I understand that drinking is legal in certain situations and I am not saying it should not be, but I do not think we should promote drinking. Thank you.

Council Chair Rapozo:

Anne.

Ms. Punohu: *Aloha.* Anne Punohu. I am sorry Councilmember Kagawa, I cannot agree with you on this one. Our public golf course is there for a reason; first, they are not here for tourists, they are here for us. The public golf course is there because the tourists have nice, beautiful, expensive golf courses to go play golf on and our kids do not have a place to play golf that they can afford. My youngest daughter, Kanani, had some great opportunity and experienced for the first time to play golf through an afterschool program on the public golf course. I would not have approve as a parent if I knew there were going to be alcohol served there. I just feel that in this instance...we decided that we were not going to allow drinking in our public parks, but we do it anyway, right? Okay. Same as we bring alcohol to the public golf course because we want to. I agree with the last speaker, I do not think we should be promoting drugs or alcohol in our County facilities because it sets a bad example. One of the reasons why people will go to a public golf course, if they are visiting, is if they have large families because if you are here on a budget and staying in a nice place, and you may be want to play with you and your husband, that is great. But if you are here with your family, it is prohibitive for some visitors to do that. Some visitors will attend our public golf course because they have large families. That means that there are more children there and I do not think that this is the best way to solve the revenue issues for the public golf course. It is a public golf course. It is for the public and it is for the people of Kaua'i, mostly, and that is who we want to promote it for. If we are going to talk about one sport needing alcohol to make that sport amenable for more people, then you are opening up a Pandora's Box for all...how about at our baseball games. Why do we not serve alcohol for the soccer games? Hey, that is a great idea. No, it is not a great idea. I appreciate what you are trying to say and everything and I love both of you, but I go against Councilmember Yukimura all the time and she is family. I have to go against you on this one. *Mahalo.*

Council Chair Rapozo: Anyone else? Further discussion?
Councilmember Kagawa.

There being no further testimony, the meeting was called back to order, and proceeded as follows:

Councilmember Kagawa: Thank you, Council Chair. That is why it is great that we have the options and the time to discuss matters. The fact of the matter is we need to consider that Wailua Golf Course was without a restaurant concessionaire for almost two (2) years at one point. You talk about the play, it was slower than slow when we did not have the restaurant concessionaire there. At the same time we also did not have a golf pro shop. There were two (2) features at Wailua Golf Course, most beautiful public course in the State that had those missing features. This was a suggestion made by the current vendor and he is not doing it for himself because he does not know if he is going to win the next bid, if this option is there, because a new bid will have to be done. He is just saying that under the current situation, he does not see extending his contract any longer and where will we be again? Will we be without a restaurant concessionaire for the next two (2) years again? What will happen to our subsidy? Will our subsidy grow again as it did back then. As policymakers, our job is to take the public input, take the private vendor input, and try to find solutions. If the public sentiment says, "Even though we may risk not having a vendor, we do not want it," then fine. I think the votes will reflect whatever the public wants and that is why we have this before us. It is not myself or Councilmember Chock, or Council Chair Rapozo who want to promote alcohol for golf. No. I think what we are trying to do is we are trying to prevent this golf course from ever having it operate without a restaurant concessionaire again, which is tragic as we are struggling financially and we are concerned about the subsidy to the golf course. Again, this is not set in stone. My vote is not set in stone. We have more opportunities at the public hearing to discuss this. Councilmember Hooser and myself have a lot of questions about the Department of Parks & Recreation as to how this will work. Who will monitor illegal consumption of alcohol without buying it from the vendor? How will we handle that situation? What will it take as far as adding a possible full-time marshal or what have you? There are a lot of questions that need to be asked, but it is just first reading and hopefully we can get support to at least to go to public hearing and the Committee Meeting. Thank you.

Council Chair Rapozo: Thank you. Councilmember Chock.

Councilmember Chock: I want to thank Councilmember Kagawa. This request did come from the vendor initially and I actually appreciate the comments that have come from the public thus far this morning, and I want to hear more. I am going to be supporting it on first reading for a couple reasons. One (1) is we have to be competitive and we have to figure out how to run some of our services more like a business. My hope is that this opens up the opportunity to discuss how to do that. In the end, of course, if this is not the right avenue, then I think the Council will respond properly, but I think we need to hear from our golfers and all people, especially the youth who use our course. This is what this is for, is to put it on the table. Thank you.

Council Chair Rapozo: Councilmember Hooser.

Councilmember Hooser: I respect Councilmembers responding to the vendor's needs and requests, first of all, but I have serious concerns about going in this direction. One (1) accident caused by alcohol, a car turned over, a car in a ditch, or somebody gets hurts; just one (1) accident could wipe everything out in terms of additional revenue for the County. I think it sends the wrong message also. I have not played golf in a long time, but I have enjoyed in the past and I have enjoyed a beer on the course. At the same time, I do not think we should encourage that especially on a public golf course that is used extensively by families. Junior golf is a huge part of program out there that I think we should support. Inadvertently sending a message that we cannot have fun, we cannot really play golf, and have a good time without a drink, I think rubs me a little bit the wrong way. I am not supporting this, but will be open to perhaps changing my mind depending on what the testimony comes in the future. I know now, I do not think it is a good idea. Thank you.

Council Chair Rapozo: Councilmember Yukimura.

Councilmember Yukimura: I will be voting for this on first reading to get it to a public hearing. I do have concerns. I would like to know what the other golf courses where alcohol is allowed are experiencing with respect to problems with alcohol. That is something that would be good if we could get that data. I particularly appreciate Anne's reminder that young people are on the course and that is a consideration that would have to be addressed if this Bill were to go through. I do think that input from the public will be important, golfers as well as others, but I think we need to move it forward to a public hearing.

Council Chair Rapozo: Thank you. Councilmember Kualii.

Councilmember Kualii: The only thing that I would add is that wherever we end up with this, if we do not move forward with the approval, we still have to than address what the common/current practice is. As far as liability and insurance, I think if we have a formal policy and then we have the individual vendor responsible with the insurance, it is all a lot cleaner. I think we probably have as much liability right now or maybe even more than if we take action to create a policy, after looking at all of what makes sense. To now have the practice and no enforcement, we are just as responsible, I think.

Council Chair Rapozo: Further discussion?

The motion to receive C 2016-179 for the record was then put, and unanimously carried.

Council Chair Rapozo: Motion carried. Next item, please.

Ms. Fountain-Tanigawa: Council Chair, did you want to take a roll call on the Bill?

Council Chair Rapozo: Yes, let us take the Bill. This was just the communication. Was your vote a yes?

Councilmember Hooser: I will say yes.

Council Chair Rapozo:
us go straight to the Bill.

Okay, unanimous on the communication. Let

There being no objections, Proposed Draft Bill (No. 2635) was taken out of order.

BILL FOR FIRST READING:

Proposed Draft Bill (No. 2635) – A BILL FOR AN ORDINANCE TO AMEND CHAPTER 19, KAUAI COUNTY CODE 1987, AS AMENDED, RELATING TO THE WAILUA GOLF COURSE: Councilmember Kualii moved for passage of Proposed Draft Bill (No. 2635) on first reading, that it be ordered to print, that a public hearing thereon be scheduled for September 7, 2016, and referred to the Public Works / Parks & Recreation Committee, seconded by Councilmember Kaneshiro.

Council Chair Rapozo: Further discussion? Any public testimony on this Bill?

There being no objections, the rules were suspended to take public testimony.

There being no one present to provide testimony, the meeting was called back to order, and proceeded as follow:

Council Chair Rapozo: Roll call.

The motion for passage of Proposed Draft Bill (No. 2635) on first reading, that it be ordered to print, that a public hearing thereon be scheduled for September 7, 2016, and referred to the Public Works / Parks & Recreation Committee was then put, and carried by the following vote:

FOR PASSAGE:	Chock, Kagawa, Kaneshiro, Kualii, Yukimura, Rapozo	TOTAL – 6,
AGAINST PASSAGE:	Hooser	TOTAL – 1,
EXCUSED & NOT VOTING:	None	TOTAL – 0,
RECUSED & NOT VOTING:	None	TOTAL – 0.

Ms. Fountain-Tanigawa: Six (6) ayes and one (1) no.

Council Chair Rapozo: That motion was for passage on first reading and get it to a public hearing. Councilmember Kualii, when is the public hearing set for?

Councilmember Kualii: September 7th.

Council Chair Rapozo: September 7th at 1:30 p.m. Next item, please.

CLAIM:

C 2016-180 Communication (07/22/2016) from the County Clerk, transmitting a claim filed against the County of Kauai by Charles M. Cecil, for

damage to his vehicle, pursuant to Section 23.06, Charter of the County of Kauaʻi: Councilmember Kualii moved to refer C 2016-180 to the County Attorney's Office for disposition and/or report back to the Council, seconded by Councilmember Kaneshiro.

Council Chair Rapozo: Any discussion or public testimony?

There being no objections, the rules were suspended to take public testimony.

There being no one present to provide testimony, the meeting was called back to order, and proceeded as follows:

The motion refer C 2016-180 to the County Attorney's Office for disposition and/or report back to the Council was then put, and unanimously carried.

COMMITTEE REPORT:

PLANNING COMMITTEE:

A report (No. CR-PL 2016-07) submitted by the Planning Committee, recommending that the following be Approved as Amended on second and final reading:

"Bill No. 2627, Draft 1 A BILL FOR AN ORDINANCE TO AMEND CHAPTER 10, KAUA'I COUNTY CODE 1987, AS AMENDED, BY ADDING A NEW ARTICLE 5B, RELATING TO THE LĪHU'E PLANNING DISTRICT (*County of Kauaʻi, Applicant*),"

Councilmember Kualii moved for approval of the report, seconded by Councilmember Chock.

There being no objections, the rules were suspended to take public testimony.

There being no one present to provide testimony, the meeting was called back to order, and proceeded as follows:

The motion for approval of the report was then put, and unanimously carried.

RESOLUTIONS:

Resolution No. 2016-50 – RESOLUTION ESTABLISHING A COUNTY BUS STOP ALONG KAWAIIHAU ROAD, KAWAIIHAU DISTRICT, COUNTY OF KAUA'I: Councilmember Kagawa moved for adoption of Resolution No. 2016-50, seconded by Councilmember Kualii.

Council Chair Rapozo: Any discussion? I will suspend the rules. We had a question regarding the ADA compliance on the bus stop. Is the Administration prepared to address that today? Okay, we will take the public testimony after we receive the report.

There being no objections, the rules were suspended.

CELIA M. MAHIKOA, Executive on Transportation: Celia Mahikoa with
the County Transportation Agency.

LINDA NULAND, ADA Coordinator: Linda Nuland, ADA
Coordinator.

MICHAEL MOULE, Chief of Engineering Division: Michael Moule,
Chief of Engineering, Department of Public Works.

Council Chair Rapozo: The only question we had after the last
discussion was whether or not the site was ADA compatible or if we were required to
make it ADA compatible. That was the only question we had.

Ms. Mahikoa: From that point, I believe that we had
consulted with the Engineering Division as well as the ADA Coordinator upon review
of the location as well as what the requirements are, it was deemed that the location
would be ADA accessible; it is compliant, yes.

Council Chair Rapozo: Okay. Any other questions? If not, thank you
very much.

Ms. Nuland: Thank you.

Council Chair Rapozo: Any public testimony? Alice.

ALICE PARKER: Alice Parker, for the record. I am wondering
about accessible crosswalk to the bus stop, just so that people with access challenges
can make sure they can get to the bus stop. Thank you.

Council Chair Rapozo: I will send over a memorandum having them
take a look at that. I am not familiar with that area, but we can have them take a
look at that. Any other public testimony? Further discussion? Seeing none. Roll call.

There being no further testimony, the meeting was called back to order, and
proceeded as follows:

The motion for adoption of Resolution No. 2016-50 was then put, and carried
by the following vote:

FOR APPROVAL:	Chock, Hooser, Kagawa, Kaneshiro,	
	Kuali'i, Yukimura, Rapozo	TOTAL – 7,
AGAINST APPROVAL:	None	TOTAL – 0,
EXCUSED & NOT VOTING:	None	TOTAL – 0,
RECUSED & NOT VOTING:	None	TOTAL – 0.

Ms. Fountain-Tanigawa: Seven (7) ayes.

Resolution No. 2016-52 – RESOLUTION ESTABLISHING A SCHOOL ZONE WITH A 15-MILE PER HOUR (MPH) SPEED LIMIT FOR A PORTION OF KUKUIHALE ROAD, KAWAIHAU DISTRICT, COUNTY OF KAUAI: Councilmember Kaneshiro moved for approval of Resolution No. 2016-52, seconded by Councilmember Yukimura.

Council Chair Rapozo: Any discussion? Public testimony? Seeing none. Roll call.

Councilmember Yukimura: I think she wanted to speak.

Council Chair Rapozo: I am sorry. I will suspend the rules.

There being no objections, the rules were suspended to take public testimony.

Ms. Williams: Hi, Pat Hunter Williams. I know it is not the policy of the Chair or protocol to entertain questions from speakers, but I just want to seek clarification. Will there be discussion right now prior to a vote on the Resolution?

Council Chair Rapozo: I have called for discussion, but there was none. If you did want to have us...

Ms. Williams: No, not for me, from Councilmembers. Otherwise, I will respectfully ask a Councilmember recuse him or herself.

Council Chair Rapozo: Okay.

Ms. Williams: If you are not going to have discussion amongst Councilmembers, then no problem.

Council Chair Rapozo: Okay. Let us take a short recess and I can chat with the testifier. Let us take a five (5) minute recess.

There being no objections, the Council recessed at 11:54 a.m.

The meeting was called back to order at 12:00 p.m., and proceeded as follows:

Council Chair Rapozo: I will call the meeting back to order. Thank you for your indulgence. We are on Resolution No. 2016-52. If there are no further comments or any more discussion, may we have roll call?

The motion for adoption of Resolution No. 2016-52 was then put, and carried by the following vote:

FOR APPROVAL:	Chock, Hooser, Kagawa, Kaneshiro, Kuali'i, Yukimura, Rapozo	TOTAL – 7,
AGAINST APPROVAL:	None	TOTAL – 0,
EXCUSED & NOT VOTING:	None	TOTAL – 0,
RECUSED & NOT VOTING:	None	TOTAL – 0.

Ms. Fountain-Tanigawa: Seven (7) ayes.

Council Chair Rapozo: Next item, please.

BILL FOR SECOND READING:

Bill No. 2627, Draft 2 – A BILL FOR AN ORDINANCE TO AMEND CHAPTER 10, KAUAI COUNTY CODE 1987, AS AMENDED, BY ADDING A NEW ARTICLE 5B, RELATING TO THE LĪHU'E PLANNING DISTRICT: Councilmember Kuali'i moved for adoption of Bill No. 2627, Draft 2, on second and final reading, and that it be transmitted to the Mayor for his approval, seconded by Councilmember Yukimura.

Councilmember Kagawa moved to amend Bill No. 2627, Draft 2 as circulated, and as shown in the Floor Amendment which is attached hereto as Attachment 1, seconded by Councilmember Kuali'i.

Councilmember Kagawa: This is just a housekeeping amendment. If you look on page 2, item (6)(c)(1), we just did a change from three thousand five hundred (3,500) to five thousand (5,000) square feet.

The motion to amend Bill No. 2627, Draft 2 as circulated, and as shown in the Floor Amendment which is attached hereto as Attachment 1 was then put, and unanimously carried.

Council Chair Rapozo: This is a housekeeping amendment. Any more amendments? That amendment did pass unanimously. We are back to the main motion. Councilmember Kaneshiro.

Councilmember Kaneshiro: I have a question for the Administration.

Council Chair Rapozo: Okay, which department?

Councilmember Kaneshiro: Planning Department.

Council Chair Rapozo: I will suspend the rules.

There being no objections, the rules were suspended.

Councilmember Kaneshiro: We have been through this a lot, continually thinking about it. I know at one point we were trying to make it affordable and now we are just trying to increase housing. I guess I had two (2) questions and you may have touched on it before, but I have been getting a lot of comments on it too. In looking at this Bill, should it be an island-wide policy rather than specific to Līhu'e and Hanamā'ulu?

Mr. Hull: Deputy Planning Director Ka'āina Hull for the Planning Department. Yes, Councilmember Kaneshiro, the point is well taken. I believe other Councilmembers have expressed that in previous Council Meetings. I can say we have actually received a fair amount of input from the public as far as it being now on the Council agenda and has been getting more publicity. We have taken a fair amount of phone calls and I can think of at least one (1) or two (2) written pieces of input stating that it should be island-wide. When the Department originally drafted it up, it was really spurring off of the Līhu'e Community Plan that was recently adopted. I was looking at very specific policy recommendations within that plan. That is a recently adopted plan. Other areas, I have not gone through the planning process and therefore, that is why there are certain measures like that in their assumptions, but at the same time and on the same note, some of those community areas, their plans are decades old. I would not say that it is a conclusion that it cannot be implemented island-wide. I think it there is movement on this Council to want to look at it being island-wide, the Department has no objections to that, except just for the fact that the way this is currently drafted, it would constitute a substantial change and would require going back to the Planning Commission. Having said that, the current iteration of the draft bill does have a stay of one hundred fifty (150) days of adoption...sorry, excuse me. If it is adopted, it has a stay of one hundred fifty (150) days stating that it will not be implemented for at least one hundred fifty (150) days, which is roughly five (5) months. If adopted today, it would take five (5) or six (6) months before actually being implemented, which is roughly about the time it would take to go back to the Planning Commission to review opening it up to the rest of the island. If there is a request to that, we can definitely review that back at the Planning Commission for opening it up to the rest of the island.

Council Chair Rapozo: Go ahead.

(Council Chair Rapozo, the presiding officer, relinquished Chairmanship to Councilmember Kagawa.)

Councilmember Kaneshiro: In thinking about this entire thing, housing is critical, we are trying to think of how do we increase the number of units we have on the island, and so I am thinking about this policy as far as this is specific to Līhu'e-Hanamā'ulu, but our housing crisis as a whole island. Now taking out the affordable part, is it still necessary to limit the size of the Additional Rental Unit (ARU)?

Mr. Hull: The size of dwelling units often do directly correlate a result in a certain price level being maintained. The smaller the units are, the more it is going to be aimed at that entry level type of housing market be it new families, *kupuna*, and single individuals. The larger the structure is, often you will see, the higher rental rates it is going to be, just based on market principles. That is why we proposed that. It was actually in direct discussions among other groups, but with the Board of Realtors who acknowledged that in their business if it is a larger structure, they can make more revenue off it and they would appreciate that. However, they also acknowledge the fact that they have long vast cues of people, some realtors have twenty (20), thirty (30) clients deep waiting for these smaller units and these smaller type of units, at least from the Board of Realtors perspective, are really not much of a supply for it. There is no inventory for it. Therefore, providing for that particular sector was important for both the Department in drafting as well as looking at input from the stakeholders and addressing arguably more dire needs. There is a housing need and there is a housing crisis throughout the island, but then you look at the gradation of pockets where there is little to no inventory, it seem that that was a major pocket that is missing from the inventory here on Kaua'i.

Councilmember Kaneshiro: If we are trying to promote housing...are we trying to tying our arms by limiting the size of the additional residential unit because whether it is a small unit or a bigger unit, if somebody moves in that means there is another opening for someone else somewhere else. By adding inventory, it opens up more housing. I am having a hard time thinking about the whole policy and what is the biggest bang for our buck as far as this Bill goes. Is it to make it island-wide, take out the restrictions for the size, or does it go with the current Bill we have where it is specific to Līhu'e and you limit the size? That is what I have been contemplating over the last week since passing it out of Committee.

Councilmember Kagawa: Councilmember Kualī'i.

Councilmember Kualī'i: Are you saying that any change to the geographic area beyond the Līhu'e District, which includes Hanamā'ulu, Puhi, and Līhu'e, would require a different bill? Is there an amendment to change and add to the existing geographic area?

Mr. Hull: The way that this is on the agenda and what is proposed is an amendment to Chapter 10, so to look at Kaua'i overall as a whole island of opening up this to, there would be two (2) potential avenues. One would be Chapter 8, which is the Comprehensive Zoning Ordinance and would require a new bill because it is not concerning Chapter 10. The other avenue that could be done is looking at each respective development plan and/or community plan for each geographical area on Kaua'i which is no Chapter 10, so that could be done via an amendment. Even an amendment of that nature would be substantial in nature so that it would require going back to the Planning Commission for further review at that level.

Councilmember Kualī'i: Obviously going from one district to the entire island is one little trial pilot, if you will, versus the entire island, so you do not know what could happen as far as growth, density, traffic, and all the things that come with "if it all happens in one place," without that community necessarily chiming in, in advance.

Mr. Hull: In preliminarily speaking, if it gets sent back we would have to entertain what would be the best vehicle to look at; Chapter 8 or Chapter 10. Again, preliminarily speaking, I would say that I would be leaning towards the Chapter 10 vehicle because in the Chapter 10 process, you are looking at each specific development plan for each specific community. You have a North Shore Development Plan, East Kaua'i Development Plan, you have the Līhu'e Community Plan, the South Kaua'i Community Plan, and then a West Kaua'i Community Plan. We would essentially be going into each one of those to make adjustments so that it would be allowed island-wide and at that time each community is able to chime in on whether or not they feel it would be appropriate, which I do not think there is any objection from the Department on having to go through that process. Particularly given some of the Council's comments to that effect and like I said because we have been actually receiving a fair amount of public input from individuals that are saying, "Why not from my side of the island?"

Councilmember Kualī'i: Another thought I had and I want to run it by you, I may have mentioned it a little bit last time is in my Hawaiian Homestead community, I have been hearing from different people interested in accelerating or finding different partners to get involved with helping to create more housing faster. They are talking about things like tiny homes and the lots typically on the Hawaiian Homestead properties are all ten thousand (10,000) square feet, at a minimum. There was an experimental project in Hanapēpē which had smaller lots with marked development wants, and people fought for it to not go that way. Hawaiian homes, in essence, is pretty much about as affordable as it comes in the island. Granted there is that limitation where it is only available to people who are fifty percent (50%) of Hawaiian ancestry, but it is still housing for people that live on Kaua'i. I think at a minimum if the Department would not be ready...if we could not go island-wide and maybe we should not for different reasons, that we should look at the Hawaiian Homestead lands. There are thousands of acres, there are housing that exists on big lots, many of the families are multi-generational and expanding, and there would be additional housing that people could live with their family, but not with their family. Sort of in a separate dwelling and they would not be taking up other housing that is already limited for everyone else.

(Councilmember Kagawa returned Chairmanship to Council Chair Rapozo.)

Mr. Hull: To that point, Councilmember Kualī'i, I think looking at all avenues and typically Department of Hawaiian Home Lands (DHHL) are task with looking at specifically providing housing opportunities for Native Hawaiian people. The obstacle that the County sometimes runs into is that it is more of a

partnership process than it is a review process and that is because Hawaiian Homelands are strictly exempt from zoning review. The density parameters and/or size restrictions and/or entitlements that zoning allows for, DHHL is not subject to that.

Councilmember Kualii: Thank you.

Council Chair Rapozo: Councilmember Yukimura.

Councilmember Yukimura: In effect, Anahola on DHHL lands could do this without any ordinance from the County?

Mr. Hull: It would be subject to DHHL review.

Councilmember Yukimura: Right. So, it would be DHHL rules that have to be changed, not any County zoning, right?

Mr. Hull: Yes. If DHHL say that you can put x amount of units on a particular lot of record, they can do that without having approval by the Planning Department.

Councilmember Yukimura: So they have a lot more leeway to do experimentation for small houses, big houses, or whatever?

Mr. Hull: I do not want to speak for DHHL under their parameters and rules and regulations because they do have their own set that they have to meet, but I can say that they do not required to meet the zoning review and regulations.

Councilmember Yukimura: Does enlarging the size of the unit increase the speculative pressures? I think Planning has been really pushing smaller sizes to control cost and speculation and so to enlarge it...would Planning support that?

Mr. Hull: I cannot say whether or whether not we would object to or support it at this point. Much of the speculative aspects of housing are removed from this particular topic because they are prohibited from Condominium Property Regime (CPR), so they will not be able to sell the unit off. To my comments to Councilmember Kaneshiro, the primary intent of reducing the footprint is just so that it is particularly aimed at that entry-level housing market; those single individuals, newer families, and *kupuna*. My first apartment I lived in was seven hundred (700) square feet and the first house I bought was eight hundred (800) square feet, so that is kind of like the entry-level market. Like I said with discussions with the Board of Realtors, that is where they seem to have the biggest needs. They could derive and make more income on larger units, but the biggest needs that they seem to point out is where there is an inventory that these long cues of people waiting for access to units for rental were those individuals looking for the smaller one (1) to two (2) bedroom or studio apartments.

Councilmember Yukimura: And they are less problematic in that parking probably does not have to be as plentiful as if you had room for three (3) bedroom unit, larger size, right, and even draw on water sources. If you begin to talk about Facilities Reserve Charges (FRCs), is also less, is it not?

Mr. Hull: Right now...

Councilmember Yukimura: By controlling size.

Mr. Hull: There is some merit to the discretion for whether or not more parking requirements are needed, but as far as FRC (inaudible), the size of a dwelling unit does not dictate the FRC cost. You have a two (2) bedroom, five hundred (500) square foot unit, it is roughly fifteen thousand dollars (\$15,000). If it is a five thousand (5,000) square foot unit with twenty (20) bedrooms, it is still fifteen thousand dollars (\$15,000), which we had the discussion there and some of us disagreed with that, but that is where that is today.

Councilmember Yukimura: Okay. Given that the Planning Department had so much input on this, I would want the Planning Department to give us their position if we are going to talk about increasing size and would like to know the rationale in terms of impact, concern, and the overall goal of increasing supply, but also the points you raised. I certainly hope we are not thinking about doing amendments to that effect right now. I would really prefer to see how it works in a limited area.

Mr. Hull: While I can confidently say that any move from outside the geographical area of Līhu'e would be a substantial change. Concerning the square footage, it was in their original proposal, but I would actually have to defer to the County Attorney whether or not it is a substantial change or if it would also be required going back to the Planning Commission. Like I said, because there is the hundred and fifty (150) day stay on the ordinance as it is drafted right now, we would not have any objections taking it back to the Planning Commission.

Councilmember Yukimura: What was the rationale for the hundred fifty (150) days stay?

Mr. Hull: I believe Councilmember Kualii amended it, which the Department agreed with and the Council adopted at the Committee level and that was to allow for further time for a potential incentive bill to come before the Council and be able to review that and perhaps tie it in tandem with it. There is that five to six month stay, right now in the draft that is before you folks. All I am saying that, you have that five (5) to six (6) month stay, there are additional questions that seem to be coming up and it would be no harm/no foul to take four (4) or five (5) more months to return this back to the Planning Commission.

Councilmember Yukimura: But if you have a moving target during the one hundred fifty (150) or one hundred whatever days it is, and you were trying to assess impacts or something, if you have a moving target, then you are not giving yourself the one hundred fifty (150) days, if you are constantly changing the proposal.

Mr. Hull: The Department did not propose the one hundred fifty (150) days; that was adopted here at the Council. I am just saying that the one hundred fifty (150) days is there.

Council Chair Rapozo: Councilmember Hooser.

Councilmember Hooser: Since this initiative has already gone to the Planning Commission and then thoroughly vetted, we could pass this as-is and then if someone wanted to introduce one for another area, then they could do that and it run separately and this could still be here. Is that correct?

Mr. Hull: That is another possibility.

Councilmember Hooser: It seems like being involved in the General Plan process/the community plan process, each community wants to maintain its own identity and some communities might want to increase density and some may not. Some oceanfront communities, if allowed to build another residence, would not serve the needs of what we are trying to serve at all, in my opinion, to give the people the right to build another house on Po'ipū Beach or Hanalei Bay. It is just going to be a windfall profit even with a small rental in my opinion to those types of people. As you start looking at the inventory, it seems obvious that some places it would be appropriate and some places not. Would you agree? Do you think the Planning Department could agree on a blanket island-wide policy for every single lot?

Mr. Hull: I would not say that it is a form of conclusion that it should just be solely limited to Līhu'e because the Līhu'e Community Plan says so and the other community plans do not. As I pointed out previously, several of these community plans are decades old and have not been updated. There is indeed a housing crisis, not just in Līhu'e, but throughout the entire island. Like I said, Councilmember, it can yes indeed be adopted today and would be implemented if the subject language is adopted in one hundred fifty (150) days. That is one available avenue.

Councilmember Hooser: So, we could adopt this now and then another vehicle could look at different parts of the island?

Mr. Hull: That is a possibility.

Councilmember Hooser: It is just a little bit frustrating because in the very initial discussion that we had and I am not sure if you were there or not, but the Administration was there, was a broader look. It was then suggested to look at Līhu'e because that is where the community plan is, that is where the infrastructure is, that

is where the walkable communities are, that is where the jobs are, that is where most likely the local residents would...is it affordable, if you could, I will use that word loosely, to be built. I think that is where the discussion has been. In terms of increasing the size, I think you mentioned correctly that the smaller size provided some additional impetus, if you would, that the resulting rents and people would tend to go on the more "affordable," I will use that term, range, because it will be small two (2) bedroom units. Councilmember Yukimura mentioned it and my concern would be the so-called "super-houses." If we did not limit it, we could have additional structures of two thousand four hundred (2,400) square feet, which we are talking about density, traffic, and impacts. It would substantially change the entire nature of this proposal.

Mr. Hull:
the sense that...

I would have to say, "kind of," but not quite. In

Councilmember Hooser:

Kind of, but not quite?

Mr. Hull: Yes. In the sense that the properties here for ARUs, you are talking about a small set that can build and truly take advantage of it under the ten thousand (10,000) square foot property level. That is because currently as the Bill sits, you are not allowed to do an ARU if you have an ADU or second dwelling. We were clear that every single residential property, Līhu'e or otherwise, is entitled to an ADU or a second dwelling unit. The ADU is for any property that does not qualify for more than two (2) dwelling units, so depending on the size, density, and lot for that property, you are entitled to either an ADU or second dwelling unit if you are over ten thousand (10,000) square feet. The incentives are not there, market-wise and zoning-wise. If you have entitlement to an ADU to now say, "I am going to subject myself to this ARU thing where I cannot CPR it right now, and I got a limitation of the size I can build." Those folks will definitely say, "I am going for the ADU entitlement. I am not going for the ARU." The ARU is really aimed, more specifically as this is drafted, at those properties under ten thousand (10,000) square feet...

Councilmember Hooser:

Right, exactly.

Mr. Hull: ...which are not going to have that much buildable area, so to speak, to put these monstrous units in. There is still a very limited amount of space that they can build on, as well as setbacks. That is the reason I sort of danced around the question is because, yes, taking out the size will allow for people to build bigger units, but given the type of properties that this Bill affects, the units would not necessarily be exorbitantly large. Do not construe that, as that is the Department's official position of supporting such an amendment. At this point, I would say that we are not ready to weigh in on whether we object or support to that type of amendment.

Council Chair Rapozo:

Councilmember Kagawa.

Councilmember Kagawa: I did some research, thanks to Aida from Council Services. I have found that from 1972 we had this ordinance you just talked

about that limits lots of ten thousand (10,000) square feet or more to have an additional dwelling unit. Then we have a change in 1982, I believe, called it "*ohana* zoned." Is that basically the same thing?

Mr. Hull:

Yes.

Councilmember Kagawa: I have some minutes that I wanted to share because we heard a comment last week from the Councilmember saying that people of Hanamā'ulu and Puhi are perfectly fine. I want to read Mr. Sarita's comments. Is this Bill going to have that kind of effect? Councilmember Sarita said, "Mike, on your statement about the neighbors acting as the policeman, so to speak, I do not think it would work very well. That is how Hanamā'ulu became the way it is. The people in there do not want to take up action against their neighbors and so they try to suffer in silence. They see what is happening and when they finally say that they have to complain, the structure is already there and the abuses are going on. Even our Planning people are not brave enough to go over there and stop it." We say Hanamā'ulu people are fine about it, but apparently in 1982, they were not fine. How many complaints since 1982 has the Planning Commission investigated about neighbors who have illegal structures, which this Bill proposes to satisfy some of these?

Mr. Hull:

Councilmember Kagawa, we were able to pull numbers for enforcement in the Līhu'e area at your request at one of the other Committee Meetings. We were unable to parse out specifically Hanamā'ulu. We do not have a geographical information system (GIS) position and the one person with the GIS capabilities have been out of the office for the past few weeks. We are able to look at enforcement actions in the Līhu'e area that was encompassed of Puhi, Līhu'e, and Hanamā'ulu altogether ranging back to 1998. There are approximately three hundred forty-six (346) complaints investigated in that area since 1998. Some of them were for illegal dwelling units, some of them were for illegal structures, and some of them were for illegal uses; say commercial uses in residential district, and so on and so forth. Some of them were just neighborly feuds that resulted in no zoning compliance notices were issued. There is an array. We cannot specifically parse it out because we do not have it digitized, but roughly three hundred forty-six (346) for the Līhu'e area. If you want we can also parse it out to Hanamā'ulu, in the next few days, if you would want that.

Councilmember Kagawa: There has been talk about much time being spent on this Bill, but have there been any measurables or milestones that the Planning Department and the introducing Councilmembers have projected as success rates of this Bill? Are we looking at adding five (5) houses in the next year or twenty (20) or fifty (50)? If we adopt this today, how can we tell that we have had success by cutting in half, not by one-third (1/3), but half (1/2)? Instead of ten thousand (10,000) square feet, you only need five thousand (5,000) square feet to put an additional unit. With this, I would call major change, as the next Council takes over, how can they tell whether this Bill is successful or not? What are the milestones or measurements that we are going to be looking at? Would one (1) be a success? Would two (2) be a success? Would one hundred (100) be a success? What are the goals? So that the average taxpayer or

neighbor that is going to have more impact, off-street parking filling up the side of his street, how are we going to tell? Even though you have that now, this Bill has been successful because we have reached our milestone. Have there been any?

Mr. Hull: We have not established any particular quota level that we would like to meet with the Bill and it is hard to anticipate. It is just providing the private sector the opportunity to build these units and it is ultimately incumbent on whether or not each private property owner wants to build it. I think the place where the County Administration is coming from is that in having our discussions with the Housing Agency, DHHL, and philanthropic organizations like Habitat for Humanity who are putting housing stock in our inventory. The response they gave is, "We are not even close to meeting our demands and never will." We need to somehow look to the private sector to say, "How can we get you folks to build the types of units for that entry-level housing that there is such a high demand for our local population?" There is definitely construction going on, right? I mean we see it. It is definitely not the inventory that is meeting our needs as a County. The large houses that are going up in parts of south Kaua'i and on the north shore, and in fact, in pulling the permit history from the past five (5) years, the most construction for single-family dwellings were in the north shore area; in the north shore agricultural lands, in particular. That is where the private sector is saying, "As a private developer, that is where my safest investment is. It is not trying to necessarily build these units that are needed for Kaua'i's entry-level housing market." We are beginning to acknowledge and understand the fact that it has to be looked at as a business. If it does not make dollars and cents, people are not going to give from their heart and build these units. Much of the investors are property owners, contractors are stating that when you look at the fact that it cost fifteen thousand dollars (\$15,000) for an FRC, ten thousand dollars (\$10,000) for draftsman, another five thousand dollars (\$5,000) or six thousand dollars (\$6,000) for permitting, and twenty thousand dollars (\$20,000) for the septic system. They have to drop sixty thousand dollars (\$60,000) to eighty thousand dollars (\$80,000) before they stick a shovel in the ground. They are saying, "My safer investment of I having to invest that amount is going to be in these larger scale units," and that is where they want to put it. What we are saying is we need to begin the discussion of saying, "We have to looking at how we can reduce cost or reduce barriers to entry or to give further incentives to build the type of inventory that meets our needs as a local population." The first step and not the only step by any means, but the first step is zoning entitlements. You cannot even build these units, period, without the zoning approval. That is all I am saying. We need to remove this first barrier and further discussions need to be had and are being had, say at the sewer level or water level, but this is just the first step, quite frankly.

Councilmember Kagawa: So as of now if no amendments take place even if say a bedroom is attached and they are going to turn it into a rental unit and they want to put in a kitchen and restroom, if they want to come in to the Department of Public Works and the Planning Department to get the proper permits, would they have to pay for the separate meter? That was a question from the public. Would they have to pay for the new FRC and have a separate sewer bill, even though they are under the same roof?

Mr. Hull: Currently, they would pay the separate FRC because it is under the same roof it would qualify as a multi-family unit, so it would be roughly nine thousand dollars (\$9,000) for the FRC.

Councilmember Kagawa: Okay.

Mr. Hull: It is a little bit reduced.

Councilmember Kagawa: Like five thousand dollars (\$5,000) off.

Mr. Hull: Yes, five thousand dollars (\$5,000) off, which it still a significant chunk of change they have to plop down for the FRC cost.

Councilmember Kagawa: But if they decide to build it separate on the side, it would be the fourteen thousand dollars (\$14,000)?

Mr. Hull: Fourteen thousand dollars (\$14,000) or fifteen thousand dollars (\$15,000).

Councilmember Kagawa: Okay. Thank you.

Council Chair Rapozo: Okay, this is where we are at. We are at lunch break. I am not sure what the pleasure of this body is, whether or not we want to entertain more amendments and have it sent back to Planning. Is the intent to vote on it today?

The meeting was called back to order, and proceeded as follows.

Council Chair Rapozo: If we are prepared to vote today, then I suggest we take the vote, because this is the last item of the day except for the Executive Sessions. We can release BC if we can dispose of this item today whether we vote on it or refer it back to Committee to have discussion. What is the pleasure? Councilmember Yukimura.

Councilmember Yukimura: I have a lot more questions to ask given the desire to expand and amend the Bill. I think if we can go with this Bill, I am ready to vote. I think even if we go with this Bill, we are going to have enough discussion to go considerably over the lunch period, so I think we need to recess for lunch, and then come back and finish our business.

Council Chair Rapozo: Okay. I am not advocating one way or the other. I am just trying to get what the feeling is.

Councilmember Yukimura: I am just saying whether we amend or not, I think we need to come back.

Council Chair Rapozo: We cannot amend it today simple because it has to go back. If we are going to be talking amendments, I will just suggest referring it back to the Committee next week. If we are going to be having that type of discussion, I would rather have that in the Committee and not at the full Council. Councilmember Chock.

Councilmember Chock: I am ready to vote on it today for what is before us. I think you are right. The potential discussion amendments that are being surfaced will require a lot more work from Planning and of course a different process. That is why I am moving towards get this one out of the way and move on something else.

Council Chair Rapozo: Councilmember Hooser.

Councilmember Hooser: I would prefer to vote today and pass this out and I want to put this on the table that I am willing to work with any Councilmember to look at moving forward if we wanted to look at other areas or a second bill to increase value to this entire thing. I think we have worked really hard on this. I think it is without question suitable for this particular district whether or not it is suitable for different districts is going to take a whole lot of discussion with a whole lot of communities. This is suitable for this area. It has been vetted. The size of the units are clearly designed to appeal to small families, local residents and to keep the rents down. It has been thoroughly vetted. I would support voting on it today and then looking at other things and I would be happy to work on that. Thank you.

Council Chair Rapozo: Councilmember Yukimura.

Councilmember Yukimura: I think it has been vetted for this district and it would be good to experiment with this district where there is a very clear policy about growth where there is more likelihood of sewers and infrastructure that supports this kind of bill. I hope the Planning Department is not advocating that we just go forward in any district because the infrastructure support is important and also I hope the Planning Department is not advocating that where we have outdated plans and do not have a clear community plan, that we would put an overlay before we have an updated community plan. That sounds really anti-planning to me. To me, there are so many things to consider about other areas that it would not be okay to move ahead with those other areas, nor would it be good to hold back an area that we vetted, that could be a pilot and we would learn from it, and be much more smarter when we are considering other areas of the island. Besides the fact that if the Planning Department has to vet all these ARUs and give out permits, if you make it island-wide and you are talking about limited staff, I mean, what is that going to do to the Planning Department? Not to mention more enforcement problems because if you put these ARUs in vacation rental potential areas, you are going to have more Transient Vacation Rental (TVR) enforcement problems.

Council Chair Rapozo: We need to wrap this up because I need to decide whether we are going to take a lunch break or not and we are having a whole discussion on this. It is a simple decision. Are we going to lunch or refer? If we are going to have more discussion, I am asking that we refer this to the Committee. Go ahead.

Councilmember Kualii: I have one (1) quick question of Mr. Hull, one (1) statement, and then I can vote.

Councilmember Yukimura: So we should recess.

Council Chair Rapozo: Just remember—we are going to recess and we have two (2) Executive Session items that have to take at 1:30 p.m., so we are looking at 3:30 p.m. or 4:00 p.m. That is what the recess will be. With that, we will recess for lunch and be back at 1:40 p.m.

There being no objections, the Council recessed at 12:39 p.m.

The meeting was called back to order at 1:40 p.m., and proceeded as follows:

(Councilmembers Kualii and Yukimura were not present.)

Council Chair Rapozo: The meeting is called back to order and we are still on item, Bill No. 2627, Draft 2, as amended. What is the pleasure of this Council? We only have five (5) Members, but if we can dispose of this now, then we can, if not, we will move on to the Executive Session, and then come back to this. Councilmember Hooser.

Councilmember Hooser: Are the other two (2) Members outside the door or coming? Do we know?

Council Chair Rapozo: I have no idea.

Councilmember Hooser: I spoke earlier to express my preferences in terms of voting to move it forward and some of us had and some of us had not.

Council Chair Rapozo: Councilmember Chock had expressed his desire to vote on it today. Any others? The motion is to approve as amended. If you want, we can call for the vote and then let the votes fall, and then we can make the appropriate motion after that.

(Councilmember Kualii was noted as present.)

Councilmember Kaneshiro: For me, I wanted to hear what the Planning Department had to say on it. It is coming from them and what they want to do.

Council Chair Rapozo: With that, let us recess Bill No. 2627, Draft 2 as amended, and let us move into the Executive Session items.

Ms. Fountain-Tanigawa: Chair, Executive Session ES-862.

(Councilmember Yukimura was noted as present.)

EXECUTIVE SESSION:

ES-862 Pursuant to Hawai'i Revised Statutes (HRS) Sections 92-4 and 92-5(a)(4), and Kaua'i County Charter Section 3.07(E), on behalf of the Council, the Office of the County Attorney requests an Executive Session with the Council to provide the Council with a briefing, discussion and consultation regarding the Quarterly Report on Pending and Denied Claims. The briefing and consultation involves consideration of the powers, duties, privileges, immunities, and/or liabilities of the Council and the County as they relate to this agenda item.

Councilmember Chock moved to convene in Executive Session for ES-862, seconded by Councilmember Yukimura.

There being no objections, the rules were suspended to take public testimony.

There being no one present to provide testimony, the meeting was called back to order, and proceeded as follow:

The motion to convene in Executive Session for ES-862 was then put, and carried by the following vote:

FOR EXECUTIVE SESSION:	Chock, Hooser, Kagawa, Kaneshiro,	
	Kuali'i, Yukimura, Rapozo	TOTAL – 7,
AGAINST EXECUTIVE SESSION:	None	TOTAL – 0,
EXCUSED & NOT VOTING:	None	TOTAL – 0,
RECUSED & NOT VOTING:	None	TOTAL – 0.

ES-863 Pursuant to Hawai'i Revised Statutes Sections (HRS) 92-4 and 92-5(a)(2), (4), and (8), the purpose of this Executive Session is to consider matters that require confidentiality under state law, to wit, the hiring of a County Auditor, including interviewing any candidates, and terms and conditions of employment. The further purpose of this executive session is to meet with the Council's legal counsel on questions and issues relating to the Council's powers, duties, privileges and immunities and/or liabilities, claims and/or potential claims, as such powers, duties, privileges and immunities and/or liabilities, claims and or potential claims relate to the foregoing item, and to take such action as the Council deems appropriate.

Councilmember Kagawa moved to convene in Executive Session for ES-863, seconded by Councilmember Kaneshiro, and carried by the following vote:

FOR EXECUTIVE SESSION:	Chock, Hooser, Kagawa, Kaneshiro, Kuali'i, Yukimura, Rapozo	TOTAL – 7,
AGAINST EXECUTIVE SESSION:	None	TOTAL – 0,
EXCUSED & NOT VOTING:	None	TOTAL – 0,
RECUSED & NOT VOTING:	None	TOTAL – 0.

Council Chair Rapozo: We will convene immediately in the Executive Session Chambers. BC, unfortunately, you have to hang out and I am not sure how long this will take.

There being no objections, the Council recessed at 1:43 p.m.

The meeting was called back to order at 2:51 p.m., and proceeded as follows:

Council Chair Rapozo: The meeting is called back to order. We are waiting for the Planning Department to come up. Councilmember Yukimura.

Councilmember Yukimura: I would like the Planning Department to finish up.

Council Chair Rapozo: Is there any further discussion as far as the direction that this body wants to go as far as the Bill that is on the floor today? I have heard Councilmember Hooser and Councilmember Chock's position. Is there anyone else? Councilmember Yukimura.

Councilmember Yukimura: I think it is clear that where we are ready to go is Līhu'e. We have vetted the issues and we have looked at maps. I do not know what would hurt us if we went ahead with Līhu'e and then worked out the other issues in the other areas where there are many more issues, like not having a current plan in place. For instance, Kalāheo is very limited with no infrastructure or that kind of thing. Also, to see how the permitting process works and what kind of staff is needed because we have already been told that the staff is limited right now. Then, you will have these additional rental units that can be used as visitor units illegally and then you will have a bigger enforcement problem. There are a lot of issues that have to be really carefully looked at before you move outside of Līhu'e.

Council Chair Rapozo: Okay. Anyone else? The Planning Department is here. I will suspend the rules. Any questions? Councilmember Kuali'i.

There being no objections, the rules were suspended.

Councilmember Kuali'i: Mr. Hull, I just wanted to know what is the eastern boundary of the Līhu'e planning district or the area that the Līhu'e Community Plan covered?

Mr. Hull: I do not have an actual map to reference it.

Councilmember Kuali'i: Just give a basic description. Is it right past Hanamā'ulu?

Mr. Hull: The edge of Hanamā'ulu, correct.

Councilmember Kualii: Does it include the jail and the golf course?
How far does it go?

Mr. Hull: It would not include the jail and golf course. It would include the eastern edge of the built-out Hanamā'ulu area as well as the unbuilt-out area across from...where they have the new D.R. Horton Development. There is a section of land that is within the agricultural zoning district that also folds with it.

Councilmember Kualii: The *makai* side?

Mr. Hull: The *makai* side, correct.

Councilmember Kualii: Where all the cows are now?

Mr. Hull: Correct.

Councilmember Kualii: So it does not go as far as the jail?

Mr. Hull: I do not believe so, but sorry, I do not have the actual map with me.

Councilmember Kualii: Or even the motocross?

Mr. Hull: I do not believe so, but I have to check on that.

Councilmember Kualii: And if it does not, what planning district would that be part of?

Mr. Hull: The east Kaua'i.

Councilmember Kualii: Does it go to the river?

Mr. Hull: I have to double check on that. Sorry, Councilmember, I did not actually bring the map. As far as this would be concerned, it would not apply to those lands any way because of the fact that those are all within the agricultural/open zoning designation.

Councilmember Kualii: Except for the five hundred (500), or so, acres that is Hawaiian Homelands for future housing.

Mr. Hull: Which also is not subject to zoning authority.

Councilmember Kualii: You say that, but I actually have in Hawaiian Homes that they say they follow the County's ordinances, zoning...

Mr. Hull: Yes, so what Hawaiian Homes generally does is they will refer the, as I understand it, applicant to the building permit process and that is more of a safety and health issue to essentially to ensure they are meeting

building code insofar as the building does not fall down on somebody's head. As far as zoning regulations...

Councilmember Kualii: I have heard it said as basic health and safety so that the building is structurally sound and nobody gets hurt, but in DHHL's residential lessee handbook says, "Building structures or improvements must meet building and zoning codes and other ordinances and regulations of the respective counties." It seem so broad that it seems like you have to follow everything.

Mr. Hull: Yes, and that is insofar as they are willing to somewhat, as a separate agency, hold on to those requirements, but on the flipside of mandating requirements is enforcement. Therefore, arguably somebody from DHHL could come in and say, "I would like to make sure this is conformance with the zoning ordinance" and we could explain to them how it is or is not in conformance and if it is, they would just get a handshake and nod. As far as enforcement, we could not go out and say, "You are actually violating our density, setbacks, heights, or whatnot." We have no authority to enforce on those.

Councilmember Kualii: But you are saying too that because of DHHL being exempt, that really the homesteader that wanted to expand in this way only has to work it out with DHHL and they do not have to do anything with the County.

Mr. Hull: They are not legally obligated under County law to come before the Planning Department. If DHHL as an entity wants to say to their applicants, you have to get zoning review and approval to meet zoning code, DHHL as a separate entity can do that on their applicants.

Councilmember Kualii: But you just said that they are not legally obligated under County law to come before the Planning Commission.

Mr. Hull: Yes.

Councilmember Kualii: Okay, thank you.

Mr. Hull: Excuse me, they are not obligated under State and Federal law, which was a General Attorney opinion.

Councilmember Kualii: Okay, thank you.

Council Chair Rapozo: Councilmember Yukimura.

Councilmember Yukimura: Mr. Hull, can you explain procedurally how...I presume you folks are going to issue an ARU permit.

Mr. Hull: Correct, there will be a zoning permit. It is also a requirement under the draft proposal before you folks to go through a clearance form process, which is much akin to the ADU clearance form process where the applicant will have to go to each respective agency to ensure there are the necessary infrastructure requirements for the subject property. Much the same way when people process ADU applications, they first have a ADU clearance form that is stamped off from each respective agency saying they have the appropriate

infrastructure in that area for that property to apply and receive approval for a zoning permit. So, we cannot sign the zoning permit unless that clearance form is first signed.

Councilmember Yukimura: In other words, they have to meet all the criteria under the law before you issue an ARU permit?

Mr. Hull: In addition to meeting to all the criteria, they also ensure that all of the necessary other reviewing agencies and they meet their laws and/or infrastructure demands.

Councilmember Yukimura: That is what I was talking about. The main thing is that you do not just issue it based on your Department's requirements. You are going to make sure that they have the available water and parking. Are you folks going to examine that parking issue?

Mr. Hull: We will examine the parking, but the water, we will just have a form of which the Department of Water will say yes or no to essentially.

Councilmember Yukimura: And sewers?

Mr. Hull: Sewer and/or septic. The Department of Health would sign off on that.

Councilmember Yukimura: Okay. How are you going to ensure that no CPR takes place?

Mr. Hull: The CPR process under the Hawai'i Real Estate Commission rules require them to forward the applications to the County Planning Department to ensure that they are not in violation or breach of any zoning codes for which if somebody attempted to CPR one of these, we would explain that it would be a violation of this particular ordinance.

Councilmember Yukimura: Okay, that is very good. That seems pretty failsafe. I would presume that in the ARU application or clearance form that they will sign binding agreement not to do a CPR.

Mr. Hull: Yes, I believe that not only would it have to be recorded in their...

Councilmember Yukimura: Deed?

Mr. Hull: Exactly, yes.

Councilmember Yukimura: So, it will always setup red flags if they do. Okay. Does the Planning Department have any objections to moving ahead with Līhu'e, right?

Mr. Hull: No. That is as drafted, correct.

Councilmember Yukimura: Okay. Which would allow us to really see how this all works?

Mr. Hull: Correct.

Councilmember Yukimura: Thank you.

Council Chair Rapozo: Any other questions? Councilmember Kagawa.

Councilmember Kagawa: I am looking at 1982 and Jeremy Harris talks about the Puhi and Kōloa properties that were own by Grove Farm Company, LLC and Grove Farm Company, LLC had covenants and the question was, does the covenants restrict them to one (1) residence and the answer is yes. Mr. Pratt talks about how the Comprehensive Zoning Ordinance (CZO), if enacted, would override the covenants.

Mr. Hull: No. My understanding is that covenants are established under Real Estate Law with the State, but those covenants are private contracts between, essentially, those within the association. It is fairly common where we allow things like chickens and there may be some associations that...in a residential district, we allow up to four (4) chickens as pets, but in a private association, it is fairly common to past in residential areas that you do not have any chicken coops and poultry in your yard and whatnot. That to a certain degree is much more restrictive than the CZO and the Planning Department will not enforce against that covenant, but it will be the responsibility of either the individual property owners or the association itself to take that violator potentially to court or through their own bylaws for rectification.

Councilmember Kagawa: Mr. Sarita asked, "Have you had complaints in your Puhi subdivision," and Mr. Pratt answers that parking is a big problem. Parking and some of the residences who let soapy water run down the street and other things like that. If we add a lot more to our inventory, do these types of problems that were talked about in 1982, get worse? That is why I am asking what the measurables are. That is why I asked for that map and wanted to see what are the projections were. I hate to run into problems like they did in 1982 and we are changing something that has been in place for forty-four (44) years, from 1972, and we are cutting it in half. I am saying, "What is going to be the impact?" Some Councilmembers say "that Puhi is fine, Hanamā'ulu is fine, what are you folks worried about?" I am worried. I am worried because in 1982 we had big problems. Mr. Sarita talks about how Hanamā'ulu is the way it is now because of the Planning Department not being brave enough to go there and stop illegal activity. Does this present possibly more problems down the line as we add inventory? We serve a good purpose. We serve the purpose that the Līhu'e plan wants more inventory, but with every good sometimes comes a bad. Like Mr. Pratt said, "Parking is a big problem;" do we add to the problems encountered in 1982?

Mr. Hull: To put it quite bluntly, Councilmember Kagawa, when you have further intensification of use, you have more impacts. That is a given. I am not going to skirt that issue. We are faced with a County of a growing island, internally, just from natural birth, we are growing. The need to put housing

and job opportunities for the *keiki* of this island, we need to ask ourselves how we want to grow. Do we want to grow up and intensify our internal uses or do we want to grow out and sprawl into the rural and agriculture lands? For the most part, the vast majority of input, in particular what we have been doing with the General Plan as well as the Community Plans that we have done in the past few years, there is a growing desire to maintain our rural land and agricultural lands. If we are going to accommodate our own growth, we have to go inside and look how we can further intensify. You are correct, there will be more on-street parking. You are putting neighbors closer to each other. I will not skirt that; I will say that definitely there will be increased on-street parking. That is something we either have to accept with further intensification or we reject as a County.

Councilmember Kagawa: Regarding Molokoa I and II, they were one (1) of the first subdivisions to have covenants for single-family housing. We can see that it is no longer single-family housing, you have brand new duplex right on the turn pass the Salvation Army that...not duplex, but there are two (2) houses. I guess one (1) is a residence and the other...if the CZO does not override the covenants, how do those types of houses get approved?

Mr. Hull: The CZO is a County law and covenant is essentially a private contract. You can enter into an array of different private contracts with individual neighbors, with your community and surrounding neighborhood, which essentially those are associations and the establishing authority for those covenants. But it is a private contract between you; the property owner, and that association that everybody is buying into and signing on saying, "I agree to these rules and regulations." In no way is this reflective of County law. The County law says that you can put in an ADU or a second dwelling on all of those lots, every single lot over ten thousand (10,000) square feet, at least, is in the residential zoning district qualifies either for a second dwelling or an ADU. Therefore, when somebody comes in for an ADU on a property that qualifies for it under the CZO, we stamp off and make sure they meet the setback and so on and so forth, but as long as they meet the rest of our zoning code, we stamp off on it. Now concerning the private contract, if it is a violation of that...and even if an association comes in and say, "County of Kaua'i Planning Department how dare you sign off on this one, I have a private contract with the other owner," and our response would be, "Indeed, that is a private contract. These entitlements are open to everybody on Kaua'i. You, as an association, need to settle your private contracts and private disputes." Something very similar to that is where the State decided to get involved with the clotheslines and solar water heaters where there were some covenants written that prohibited clotheslines and prohibited solar heaters. The State Legislature realized that these are definite strategies to reducing our energy use and say, "You, as an association, cannot have those private covenants." We would sign anybody's permit that came in for a solar water heater or clothesline, so to speak, but it could be a violation of covenants. The only way you can override those covenants is through State law to say that those covenants are no longer binding.

Councilmember Kagawa: I am looking at Section 8-26.2 adopted Ordinance No. 430, August 17, 1982. Number 6 says, "Nothing contained in this Section shall affect private covenants or deed restrictions that prohibit the construction of a second dwelling unit on any residential lot." It clearly says that the covenants shall be honored by this Ordinance.

Mr. Hull: It is not going to affect it and any County law that would attempt to supersede covenants, I am pretty sure Mauna Kea will jump right up here and explain what that is problematic. What that is essentially saying is when they past they past the ADU law, they are not restricting the covenants saying you can build an ADU, but it does not affect the covenant if there is a more restrictive covenant. Some of those associations are saying there is a more restrictive covenant, but it is not going to be the County's domain to enforce it.

Councilmember Kagawa: Okay. Let us paint a clear picture. So, if you wanted to follow the Ordinance and put a second dwelling in Pikake, the association would probably block it, right?

Mr. Hull: Correct.

Councilmember Kagawa: But if you want to do it in Molokoa because the association is no longer strong, with the original members, you can do whatever you want?

Mr. Hull: It is the responsibility of the association to enforce their covenants, yes.

Councilmember Kagawa: That is problematic for me, again. To say well we want to "open the tool box," is what I heard and give more avenues for adding to our inventory. "But, Molokoa, because you are old and no longer able to enforce your covenants, you can do it there, but Pikake, Uluko, Puako, Grove Farm is still strongly behind you and your association is strong so you cannot put an ARU there because they will block you." Is that how it works? Because the association members are not strong in enforcing the old covenants, they are subject to whatever laws we past, but where the covenants are enforced, these ARU laws will not affect them?

Mr. Hull: All I can say, Councilmember, that it is up to the associations whether or not they want to enforce their private covenants.

Councilmember Kagawa: What if I put language in that says that instead of doing what Section 6 did here and say, "Nothing contained in this Section shall affect private covenants," I will say instead that everything in this bill will supersede covenants.

Mr. Hull: I would defer that to the County Attorney.

Councilmember Kagawa: Okay. Are we talking about being fair or are we talking about being selectively fair? Some people value their property just as much as others value their property in Pikake even though we know Pikake is a prime place we all want to get to someday, but everybody's home is their castle.

Council Chair Rapozo: Any other questions for the Planning Department? Councilmember Kaneshiro.

Councilmember Kaneshiro: I am torn on my direction for this. I know the Bill is no silver-lining, but for me it is a Planning bill.

Mr. Hull: Yes, the Planning Department introduced the Bill.

Councilmember Kaneshiro: Is this the most effective tool we have now? Will it accomplish what we are trying to do or are we just wasting your time? Is this going to accomplish getting more units or do we say, "We do it," and then we say, "Maybe we should have gotten rid of the size limit on the maximum floor area because some people feel limited on being able to do it and it does not work out financially." I am kind of in a limbo. Do we do it just to see as a test, or does the Planning Department go back and say "we heard a lot from the community." As far as should it be island-wide policy, the focus has switched from small, affordable to just we need units for people to live in. What is our direction?

Mr. Hull: All I can say, Councilmember, indeed there is a Planning Department bill and our desire is to have and it looks like we are very close to actually having our desire is for action and hopefully passage of this Bill. That is the Planning Department's recommendation. I can also say, though, simultaneously that I have been hearing several concerns not just from the public, but in the array of meetings that I have attended up here, and quite frankly I do not have the crystal ball, but I am not sure if this is going to pass. There seems to be a possibility of failing because there are some concerns that some Councilmembers have about the applicability of it either island-wide or the size of the structure. Seeing that, I would almost say I would prefer than at risk of losing the ability here today, should the vote be taken and not passed, that to allay some of the concerns that have been brought up through these various meetings that it be sent back to the Planning Commission. There is no harm and foul in that and that there is a one hundred fifty (150) day stay in the current Bill. It is going to take five (5) or six (6) months to go if it was voted and passed today. Looking at the possibility that it may not be passed because there are concerns that had not been allayed in particular about an island-wide policy and It is not to say that the Department is supportive of an island-wide policy. The department does not object to an island-wide policy either. We just did not vet it at the Planning Commission level. That was not the goal at the time, but hearing these concerns, I would hate for this Bill to lose on a vote because we did not vet it enough. We could go back and vet it and we could come back with an island-wide policy. We could also vet it and could come back with the exact same bill you folks have today, but we did not vet it and I am a little fearful that we may have the majority going to vote no, and if that is the case, then we have lost the opportunity. There is some preference of further vetting it at this point to allay some concerns that have been brought up through this process.

Councilmember Yukimura: May I ask a question?

Council Chair Rapozo: Sure.

Councilmember Yukimura: What is there to lose if we pass the Bill and then work on the other areas?

Mr. Hull: That is to my point, Councilmember Yukimura, we would love for the Bill to be passed today.

Councilmember Yukimura: Because then we can see how it works.

Mr. Hull: Yes. I am in complete agreement, if we can pass a bill that is exactly what the Planning Department is hoping for, but what I am saying is that seeing that there is some hesitancy on parts of some of the Council because some issues have...that is not believed have been thoroughly vetted, we have no problem in taking the extra time to relook at this issue.

Councilmember Yukimura: So the way to change it is that people can see that their concerns can be addressed by passing it today and then working on the other areas. There is no conflict there—to pass it today and work on the other areas if our goal is to increase supply, then let us start where we feel all right and where we thought it through and where we worked on it. Then we can work on the other areas because there may be some things that we have not looked at that will come out...but let us not make a mistake on a big area. If we are going to make a mistake, make it on a small area, and learn from the mistake. We have done everything we can, I think, to think it through, but there is always a possibility we have overlooked something and better we do that on a small scale than on a big scale. That seems to make so much logic to me.

Mr. Hull: I hear the concern, Councilmember Yukimura, and I am not saying, "Please send it back to us so that we can make it island-wide," but I am just saying we have had that question multiple times from different Councilmembers and our only response really is, "We did not vet that issue."

Councilmember Yukimura: Right and so in the vetting of it, it may take longer than we think it will because it is a lot of issues, so pass what we do now and then work on the other part, but at least the other part will not delay a part that allows us to move forward.

Council Chair Rapozo: Councilmember Kaneshiro.

Councilmember Kaneshiro: I am not trying to get into a circular discussion, but I am just trying to get in a better direction. The original intent of the bill was for affordable increase units and affordable housing and so now that we took out the affordable housing part, the question is, is this the best bill to increase the amount of units in Līhu'e? Was that the intent at the time or was it to say we should limit it to a size, we are going to try and do this package deal to incentive it, or does it need to be taken back and say, "Okay, we are going in the direction, we got moved around because we took out the affordable portion." Now that our main focus is how we get more units...and I am not saying it has to go island-wide, I am just saying that maybe the discussion is island-wide, but they say, "No, let us focus it in Līhu'e," but if the intent is to get more units in Līhu'e, is this the right bill? Do they want to do something else? Do they want to get rid of the maximum floor size and say let us not tie the hands of somebody that can possibly do it. Maybe somebody has an extra room or an extra bathroom and all they need to do is put in a kitchen, but their floor area is five hundred (500) square feet rather than four hundred (400) square feet. Are we going to say, "No, they cannot do it?" That is where I am at. That is what I am juggling and trying to figure out. Let me know what kind of direction we want. Do we do this and then maybe a few people do it and then we say, "Let us get rid of the square footage" and then I do not know if the people that have already taken advantage of it

would say, "I would have liked to build my house with a bigger square footage." I do not know.

Council Chair Rapozo:

Councilmember Hooser.

Councilmember Hooser: If I remembered correctly, I did watch some of the Planning Commission Meetings when this was discussed and correct me if I am wrong, but I believe they had extensive discussions on sizes, whether to go up, whether to go sideways, and how to do this. They had public meetings and public discussions, and they had their own with input from you folks on the decision. Is that correct?

Mr. Hull:

On specifically the square footage, yes.

Councilmember Hooser: Just to be clear, the Planning Department's preference would be if we passed this Bill today.

Mr. Hull:

Yes.

Councilmember Hooser:

Okay. Thank you.

Mr. Hull:

I emphasis on pass.

Councilmember Hooser: Right, and if worst case situation it did not pass, there is nothing to prohibit someone from introducing one tomorrow and sending it to the Planning Commission, but I would like it to pass also. Thank you.

Council Chair Rapozo:

Councilmember Yukimura.

Councilmember Yukimura: An answer to Councilmember Kaneshiro's question, when we put forth this law assuming we pass it, as people come in, you will begin to get a sense of whether there are a lot of people who are wanting to exceed the limit or not. That is what happened in Kōloa-Po'ipū after you passed the form base code, people started coming in saying, "Hey, I want to apply," and then you began to see...or else they did not come in to apply and in talking to people, you began to understand what the limitations were, right? So that is one (1) way to get an idea of where the demand is, where the obstacles are, et cetera; by putting something out, being conservative, and then changing it if we find that there is no result and we need to do something else. I actually think we need to have a loan program, but I also think that we have a lot of homes that the mortgages are already paid and the person or couple is still living in it and they have issues of their child coming home to—I know several of them who are coming back from school, wanting to find a job, and wanting a beginner/starter unit, and also I myself have an issue of older parents who need more care and therefore might do better in an additional unit that is close by. We think there is a latent demand for that that it will help produce more supply. I do not know that they need a loan because some of them are quite capable of another eighty thousand dollars (\$80,000) in expenditures. Why do we not see how it works and then use it to learn where the obstacles or the risk factors are before we go really wide?

Council Chair Rapozo: The answer to that is real simple, we have elderly parents in all districts. All residents want to help their parents or their kids

in all districts, not just Līhu'e. Maybe Councilmember Yukimura lives in Līhu'e, I do not, therefore I have absolutely nothing to offer my...I do not have elderly parents, but my kids or anything. That is not the reasoning or the reasons for my thought process, but I am just saying that whatever need you can identify in Līhu'e is in the west side, is on the north side, and is on the south side. That is my only concern. There is a housing issue on every spec of land on this island. Honolulu tried this out. Honolulu has over one million (1,000,000) people and ten (10) applications. It kind of gives us a pretty good indication of the success of this type of legislation, but I am willing to look at it, but again, if you want to assure success, you have to give the opportunity a chance for success and limiting it to small pockets, I am not sure what success we are going to achieve. Any other questions of the Planning Department? Councilmember Yukimura, question? I want to get into the discussion already so we can move on this.

Councilmember Yukimura: Do the outlined areas have as much infrastructure like sewers?

Mr. Hull: Some outlining areas have adequate infrastructure and some do not. That is why I would be hesitant to say, "You should not do this absent looking at the infrastructure" because at the end of the day, the way this thing is crafted is we had earlier in the discussion, any single ARU unit that applies for entitlement has to first demonstrate that the infrastructure is adequate. Now for some, hooking into sewers is adequate, for others, hooking into a septic tank system is adequate.

Councilmember Yukimura: If you go island-wide, you will have a lot of pressures to put sewers in everywhere and that is not possible in such a low density place, which is why I thought we were maximizing infrastructure within towns, but then you will spread out the pressure to have infrastructure everywhere.

Councilmember Hooser: I have a question.

Council Chair Rapozo: Yes.

Councilmember Hooser: Along the same lines, as long as the person is willing to put in a septic system, is that sufficient?

Mr. Hull: As we understand it with the Department of Health, yes, it is.

Councilmember Hooser: So we could have island-wide people along the coastline adding in, expanding their septic systems, putting in additional units, and letting them out for thousands of thousands of dollars if we did this island-wide.

Mr. Hull: I would not want to get into that discussion and speculate as to what is going to happen island-wide. My only point to the discussion of island-wide is that we recognize that there is some concern and some perhaps desire to put it island-wide, and we did not vet that at the Planning Commission. If that is the case, we have no problems returning it back to the Planning Commission and vetting that issue.

Councilmember Hooser: Okay.

Council Chair Rapozo: Councilmember Kagawa.

Councilmember Kagawa: Did we ever have a different policy for zoning such as this for the ADU by district because it has been this way since 1972? Did we ever say only certain districts have different...which is why I am leaning towards looking at an island-wide policy or nothing because we have always had an island-wide policy, right?

Mr. Hull: I cannot think off the top of my head at this point, but I would have to do further research.

Council Chair Rapozo: Hang on. Councilmember Kagawa, are you done?

Councilmember Kagawa: No, I am not. Mr. Hull, in 1982, and I will go back, you have Mr. Pratt talking about problems in Puhi with illegal structures, and you have Councilmember Sarita, at the time, talking about illegal structures in Hanamā'ulu. The fact of the matter is that from 1982 to current is thirty-four (34) years and in thirty-four (34) years people have continued and so we have been adding inventory, probably illegally, but inventory has never stopped in Līhu'e; primarily in Puhi and Hanamā'ulu, right? Adding inventory, rooms, houses, and doing whatever they need to do to take care of families, we have mentioned that scenario, but it has never stopped. In 1982 it was bad and it is probably worst right now.

Mr. Hull: There are what we refer to as "black market structures" in those areas. As far as actual graphs or the actual numbers, we do not have that data.

Councilmember Kagawa: Knowing that we have a problem and knowing that we do not even know what is out there, is it good planning policy to even open the box up more? You do not even have a handle on what the problems we had in 1982 to now, and you want to even allow more housing when you do not even know...you do not have a grip on the problem from 1982. Are we going to loosen it up and open up the toolbox more and cut the property in half and allow what has been done on something double the size to occur? I would think that you have to do it backwards. You have to get a handle on what you have and then you open the door and the toolbox. There is a difference in philosophy at the Planning Commission if they put in a lot of time in this. I think they should have put a lot of time in trying to find out what is out there so we know what has been added to the inventory before we make statements and say, "Well, we are two thousand (2,000) units short in Līhu'e, but we do not really know what is out there to be honest."

Mr. Hull: The Department can acknowledge that there are several illegal dwelling units throughout the Līhu'e planning area and possibly more so than other districts, I am not sure. It would appear an exorbitant number in particularly in Hanamā'ulu and Puhi, but we also looked at it as a consequence of the crisis we are in. The reason these things are going up is because there is so much demand and families just cannot afford or cannot find a place to put themselves. We look at that as a symptom of the problem we have and we are attempting to address

the problem as opposed to the symptom. By putting more units on, we think we are attempting to try and address the problem itself. If it is the prerogative, ultimately, of the County or say the Council wants to look at bringing all of those places into conformance by beginning to actively enforce against these violations, I would just caution in the sense that the only active enforcement that we have actually been given moneys for and resources for and are doing is for TVRs. It is a decent task at-hand, but to actually begin actively enforcing against families living in illegal structures, that is a whole other game. That is another animal when you are pounding on doors and saying, "We understand you need a place to live and you need shelter, but you are in violation of the zoning ordinance." Actively going out there and evicting essential tenants or families adds a whole other element.

Councilmember Kagawa: I hear you and we cannot order you folks what to do, but what I am saying is the reason why you are telling us to pass this Bill is because you have a housing crisis in Līhu'e, an inventory problem. How do you know how big the inventory problem is if you do not even know how many illegal inventory have been added from 1982 to now? I am just asking a simple question so I can make a yes or no vote on something to help the Planning Department fix the problem of having an inventory problem, but I do not even know what the inventory is. Does that make sense?

Mr. Hull: Yes, definitely, Councilmember.

Council Chair Rapozo: Councilmember Yukimura.

Councilmember Yukimura: One of the good things about this Bill is by allowing an ARU, some of the units will be able to come into compliance. Whereas, if we do not pass this ARU Bill, they will not be able to come into compliance because the density exceeds what is presently allowed. This Bill is allowing increased density. That is the only way to allow...I do not know if every unit that is illegal right now is going to be able to become legal, but some will by virtue of allowing a greater density. If they are already providing affordable housing, that is a good thing to make them legal and additionally where there is no unit, right now, but this Bill will enable a unit to be built, small enough so that it will be in the area of greatest need, but will not create the problems of speculation or TVR pressures. That is going to also help our housing supply. We can put this in place and see how it works. If it does not produce a lot of units, we ask why and we begin to address the obstacles that are preventing them; whether it is financing, parking, or sewers. It is a way to get information by starting with the best we can determine now and then learning from it, refining it, and making it better.

Council Chair Rapozo: I am going to try to get us out of this circular discussion because we are going around and around. Any other questions for the Planning Department? If not, thank you very much. Does *The Garden Island* want to make any comments on this Bill? You are the only one left. We will call the meeting back to order.

The meeting was called back to order, and proceeded as follows:

Council Chair Rapozo: The motion on the table is to approve as amended. Councilmember Kagawa.

Councilmember Kagawa: I cannot support this at this time. I brought up the covenants issue with some of the new subdivisions like Pikake and Puakoa, and I would never introduce an amendment, but what I am talking about is a fairness issue. You have covenants that work for some and not work for others that were adopted way before—how fair is that? Where in the Bill, we have an inventory problem, so we are going to follow the Līhu'e Community Plan and we are going to do a whole Līhu'e area zoning change where you can put these ARUs on lots with a square footage as small as five thousand (5,000) square feet. Again, I do not think it is fair to people that fall under old covenants that are no longer actively enforced because people have sold and the boards have changed and not been active. I do not think that part is fair. I remember Mr. Dahilig saying that we have an inventory problem and that is why the community plan was adopted, but how do you know if you have a large inventory problem, a small inventory problem, no inventory problem if you do not even know what your inventory is? From 1982, we have had problems in this...you should read these minutes. I can provide you copies of these minutes. It talks about Hanamā'ulu and Puhi. Former Councilmembers Harris and Sarita would probably feel very frustrated as we just move forward when they have already told their Planning Director, at the time, of all the problems that is going on and their frustration with the process. The residents were feeling helpless, scared, and suffering in silence because of illegal homeowners next to them just disregarding the law like the "Wild Wild West" and acting as though this is the third world country. We are not a third world country. You cannot do whatever you want with your property. It is not how it works. We can go back to 1970, 1980, and point to all the Planning Directors and former Councilmembers, but the fact of the matter is I think we need to just get a handle, not kick people out, but let us find out what the inventory is of the Līhu'e area; in Hanamā'ulu, Līhu'e, and Puhi. Is it going to cost that much money to do that? I think that is a good starting place. What is our inventory? Next, what is the inventory needs? Then when we find out the inventory needs, what is the plan, what are the measurables, and what do we plan to hit that need as the need grows? Should we put a ten (10) year plan, twenty (20) year plan, or should we try just one (1) measure? By reducing lot size, will that solve the problem, or do we need a larger scope of work that is going to need to fix the problem. This is an example of "ready, fire, aim." Mr. Mickens would be smiling now, but this is ready, fire, aim, and I am not willing to "ready, fire, aim" when I see evidence back in 1982 from former Councilmembers who had problems with the original plan and illegal structures being put up wherever. People have to do what they have to do, but also neighbors have the right to have the law enforced, and that is the key. It is not for everybody, but in being fair, I think the law is the fair place and following the zoning laws, the laws of the County of Kaua'i, State of Hawai'i, is a good place to start. I do not think breaking the law or satisfying breaking the law is the solution. Thank you, Council Chair.

Council Chair Rapozo:

Councilmember Hooser.

Councilmember Hooser: I hope that four (4) Councilmembers will vote in support of this today. It is not "ready, fire, aim" or whatever that phrase is. It has gone through months of vetting and public testimony. To say otherwise is a disservice to the Planning Commission, the Planning Department, and this body, quite frankly. It has been well thought out. It is not the end-all and I will not support throwing people out on the streets who are living in someone's house that is in violation of the

Planning Department. That is ridiculous. We think we have a homeless issue now. To have a sweep-through Līhu'e or Hanamā'ulu, knocking on doors and getting rid of people because they are living with friends is crazy and unacceptable. We know what the needs are and this is a small step to deal with that. This is an opportunity that we can give the people of this district, the people of the island, to have some small relief. Even if only ten (10) units came out of this, the Housing Agency will tell you, "that is going to be three million dollars (\$3,000,000) to four million dollars (\$4,000,000) worth of value," because they do not have to buy the property, put in infrastructure, and they do not have to build. This is the way, the most efficient, the most affordable, and the most expeditious way to add new inventory in an appropriate location. It has been vetted. I agree that there are other parts of the island where this would be suitable for and I think we should look very careful and consider expanding it, but at this particular point in time, this issue has been vetted and would provide some measure of relief. No one else has offered anything at all except criticism of this issue. There have been no alternative suggestions. No one stepped up to say, "Let us do this instead." They just said, "This is a bad idea." I personally think it is a good idea. It is a modest step in the right direction to provide opportunity again for families to provide a place for mom and dad, or for their children, or for some modest amount of additional income rentals for young families and single individuals. I am hopeful, but if not, that is the will of the majority and if they do not want to move forward with this measure, but I am hopefully they will. Thank you.

Council Chair Rapozo:

Councilmember Kuali'i.

Councilmember Kuali'i: After hearing all of the discussion and hearing from the Planning Department, my "no" vote will be a vote to send the Planning Department back to vet what they did not vet. To perhaps not only vet island-wide as one (1) option, but also to vet the three (3) main neighborhoods or cities, if you will, on this island; Līhu'e, Kapa'a, and Waimea. Maybe that could be another option that is vetted to give more opportunities and fairness to more of the island if it does not make sense to do the entire island. I understood what Mr. Hull said about how they could go back, vet it all out, and come back with the same proposal. Truly if that is what happens, then I will probably be ready to support it, but today I am not ready to support it for a lot of the reasons that were said. The idea about the stay and that it takes five (5) months to take effect, in truth, that means we are in no pressure to make a decision today because even if we decided today, it would not take effect for five (5) months. Now, we can vote this down today, the Planning Department can go back to work vet out those other options that I think it is only right that we see and make our decision based on all of that additional information. It is right for our constituents. When the time comes and it comes before us again, we can remove that delay in taking effect, then we will be in a very similar position. I think if we pass this today, there is no guarantee that there will be the urgency to get it done. I think we should not pass it today and that is why I am voting "no."

Council Chair Rapozo:

Councilmember Yukimura.

Councilmember Yukimura: This Bill is a chance to increase the supply of housing on Kaua'i under conditions that are likely to provide moderately priced housing. It might not all be affordable, but even if it is in the hundred twenty percent (120%), one hundred thirty percent (130%), one hundred eighty percent (180%) it is

going to help. We need more housing and we need it urgently. There is no reason to hold back Līhu'e while we vet other areas and so we need to vote in favor of increasing housing supply now because it is so urgent. Also, the information that we will learn from this process will be valuable in how we develop it elsewhere if that is what we choose to do. The County is anticipated...I am reading from the Findings and Purpose of this Bill, "is anticipated to need an additional ten thousand (10,000) new housing units to accommodate its resident population between 2010 and 2035. The Līhu'e district is expected to absorb nearly half of this increase which would mean adding approximately 4,600 units to its current housing stock." The value of Līhu'e is that these houses will be close to services. That actually has implications for our island-wide traffic problem if people do not have to come in for the services, but are already close by. That is the value of Līhu'e. An affordable house anywhere is, especially if you include transportation cost as part of the cost of housing, which is what United States Department of Housing and Urban Development (HUD) is doing now, there is a great value and you are creating mixed use in one (1) area. This has all been vetted through the planning process. It makes a lot of sense to go with this Bill now and then to look further to see how we can increase housing supply.

Council Chair Rapozo:

Councilmember Kaneshiro.

Councilmember Kaneshiro: I am leaning towards the same as Councilmember Kuali'i. I am not comfortable passing it now. This Bill does have traction. I would feel a lot more comfortable just referring back to the Planning Commission to be vetted because when it originally came...what was the original purpose? We changed it and then you think back, is this the correct thing we are trying to do? The original one was to get more units and affordable units and we tried to do it by limiting size and doing all of these things, but as it went through our process, we started taking out things and then intent or purpose changed. Now, this has me thinking maybe we do need to take a step back, sending it back, and say, "Hey, give us something that is vetted that will make the biggest impact." Whether we want to keep the Bill as it is, this is what they feel is the best bill, or do we adjust it, or do we say that we understand the island-wide thing, but the only areas that we think are critical or we can possibly do it is maybe Kapa'a or the bigger areas, then we can come back with something that I might feel a little more comfortable with. Maybe this is my fault because last week I voted for it and I said, "Yes, we are trying to provide opportunity for housing," but I had a week to think about it and I am thinking, "Wait, is this the best bill that we are doing or should we have more time to vet it now that the intent and purpose is to increase units. Is this the best bill for that?" Should we just concentrate it in Līhu'e or make it island-wide? There are a lot of things to think about. We had a circular conversation going on relating to what the intent is and what direction we want to go. I was trying to get comfortable with it, but I would love to have it get referred back to the Planning Commission, have them come back with something, and it will just give me a little more assurance. As we have gone through the process, certain things were taken out of the Bill, and I do not know if that was the original intent or not. I want to feel a little more comfortable. I want the Bill to get a little more vetted if the intent of this Bill is to increase units supply.

Council Chair Rapozo:

Councilmember Chock.

Councilmember Chock: I will be supporting this moving forward. If it is the will of the body is to refer it, then so be it. On my end, I feel I vetted it well and we had this Bill go back to the Committee level twice now. The Planning Department is ready and willing to move this forward. We have not taken any significant steps forward and we will really need to look at multiple approaches to dealing with our housing issues today and for tomorrow. I think in our discussions, we are only scratching the surface of the true needs and the boldness that we will have to take in order to address that moving forward. It will probably take more additional rezoning needs to accommodate growth and looking at different types of housing for the future. I had anticipated that we would hear in a few months and that is why I really thought by expanding the date on this, which Councilmember Kuali'i had put in as an amendment, was good to see incentives and waivers on affordable housing to add that piece to it come to fruition. In addition, we do not enforce covenants and I have a question whether we really should. I do not think we can and should. We do not have the budget to enforce on our families, nor do I think we should enforce on our families who are just trying to make it by adapting the living style that they had to do so, but we can guide how that growth does occur. That is the reason why we have these community plans. These community plans differ from region to region. It has been vetted for the Līhu'e community, but it has not been vetted for the east side. I do not think we are going to be ready in five (5) months, honestly, to see a plan from the east side. I hope so, but I do not see it happening and therefore I think that is going to be very different. I think people in that community are going to have different wants and needs. The character is certainly different in Kapa'a, or on the east side, therefore, I am supportive of getting this forward and I can count—it does not look like it will. By the way, I do agree, I would like to see this be available to every single family on this island. As I mentioned before, I could definitely take advantage of it given my current situation, but let us start. I also advocate for small wins and this is an opportunity for a small win amongst many to see how this can work and improve upon it because the stakeholders have come to the table and talked about it. We have a lot of information already on where we are going and what we should be doing, so either way, wherever it goes...my interest from the very beginning has been do not end the conversation, do not kill it just because we have not answered a faction of the needs that are out there in our community for housing. Thank you.

Council Chair Rapozo:

Councilmember Kagawa.

Councilmember Kagawa: Are there ghosts in here? Somebody heard that I said, "Kicking people out of their homes." Just read the minutes...people are hearing things in here. What I said was the Planning Department should determine what the inventory is out there and if whatever way you can find that out what the inventory is so we know what is out there and as we target what the need is, we can find out what kind of plan we are going to make to solve the problem. It might be a multi-fold solution where it is not only changing lot size, but it might be some other accommodations dealing with the FRC or what have you. Certainly, we are not going to kick people out of their homes and there was no Councilmember that mentioned that around here, but one. Thank you, Council Chair.

Council Chair Rapozo:
Kaneshiro.

Any other discussion?

Councilmember

Councilmember Kaneshiro: I went all over my notes...I just want to reiterate, do we have a housing crisis? Yes. Will this Bill accomplish its intended purpose to encourage construction of additional rental units? I am not sure. I am not completely comfortable that it will do what it is going to do or intended to do because we may get a few units. I am just saying that I would feel more comfortable referring it back, not killing it, but referring it back to the Planning Commission. Let us have them look at it, and focus on...I feel like maybe when we originally had it with additional units and affordability, the affordability portion might have hindered the thinking as far as "how do we really accomplish getting more units in the areas that we want it." Let us refer it back, let us have them focus on the purpose, which is to get more units in the supply chain, whether it is in Līhu'e or another area that they want to expand it to, and then have it come back to us. I would just feel a lot more comfortable. Referring it back does not mean we are killing it. I just wanted to get a little more comfortable on it and that is just my own personal feeling.

Council Chair Rapozo: Anybody else? I think the fact that this Bill, if passed today, does not take effect for five (5) months, and I think Councilmember Kuali'i covered this extremely well, but not supporting this today because you do not believe that all of the issues were vetted and that was admitted by the Planning Department. The Planning Department themselves said, "We did not vet those issues out. We did not vet an island-wide application of this ordinance." Voting no today because you want that to be vetted is not killing the project. Five (5) months is a long time to get any proposed amendments over to the Planning Commission, reviewed, and brought back here. The five (5) month waiting period, as Councilmember Kuali'i stated, would not have to be in the bill. I guess what I am saying is the net effect/net gain is the passage of this Bill with possibly an increased area of applicability. That is all that is. Because I am not satisfied with the Līhu'e and I have said this from the beginning, two (2) things: affordability really bugged me. I was not here because I had my surgery when the meetings were taken place, but the affordability requirement was removed here, I believe, at the Council after it came from the Planning Department. If I was here, I would have suggested that that was a very significant change. When you take a bill that came from the Planning Department, that was vet out as an affordable housing measure and it came to the Council, and we removed it, to me, is a significant change. I was not here and it came this far. I think the removal of the affordability has to be addressed as well at the Planning Commission. That is one of the things I think that needs to be reviewed by the Planning Commission. I guess my point is that I am not suggesting that we receive this, I am not suggesting that we kill it, I am suggesting that we refer this to the Committee next week so we can put together the appropriate amendments and for me it is going to be island-wide applicability. Every community on this island has a need. At the end of the day, it is not going to hold back. I know one (1) of the comments was that if we do not pass this today, we are holding back Līhu'e, and we are not holding back Līhu'e. The Bill holds back Līhu'e for five (5) months and if we cannot get our amendments to the Planning Commission and back within five (5) months, then we are all messed up. Keeping this alive in Committee and going across to the Planning Commission does not hold back a thing, absolutely nothing. Once everything is vetted out and it gets back to the Council, at that point the passage of that bill should be able to be implemented immediately and not have a five (5) month waiting period. This would give everyone the opportunity to vet out what needs to be vetted. I just think the island-wide application is vital for my support because the fact that we... "Let us pass this one and we will worry about the others later," there

is no guarantee that this Council or the next Council will ever pass that and then you create an inequity. I am hoping that we can get more communities involved because it is not just Līhu'e, Hanamā'ulu, and Puhi that have a housing crisis issue. Councilmember Yukimura.

Councilmember Yukimura: I am a little confused about removing the affordability from the Bill. As I recall, we only removed the word "affordable" from the Findings and Purpose.

Councilmember Kaneshiro: We also removed any language regarding real property tax breaks too, which was the affordability part that the Bill tried to have.

Council Chair Rapozo: There was not only the Findings and Purpose. There was a chunk that was removed and in fact, the Findings and Purpose was a housekeeping amendment because all the guts that pertained to the affordability was removed prior. Therefore, the Findings and Purpose was no longer accurate because the guts have been taken out.

Councilmember Yukimura: Okay.

Council Chair Rapozo: Maybe I was not here, but I do read the minutes. I do pay attention at some point.

Councilmember Yukimura: Okay. Thank you.

Council Chair Rapozo: Councilmember Kaneshiro.

Councilmember Kaneshiro: Council Chair, I wanted clarification. Would we be referring it back to Committee or can we refer it back to the Planning Commission?

Council Chair Rapozo: I would suggest referring it back to the Committee so that our amendments could be forwarded or else what are you going to send it back with? We can refer it back to the Planning Commission, but there is nothing for them to vet. They will vet what they feel they need to vet, but if we wanted to proposed amendments by removing the restrictions to Līhu'e, yes, that would have to go back. It is whatever you folks want to do. I am fine with sending it straight back to the Planning Commission and trusting that Mr. Hull will...but understand that they are not required to address island-wide. They do not have to. If we do not send it over in a form of an amendment, how are they going to vet it? That is just my suggestion. I do not know when the next Planning Commission meeting is and we are probably not going to make it to the September calendar anyway, but we can propose our amendments and send the amendments. Staff can correct me if I am wrong, but I would assume if we send it over there, it will have to come with some sort of proposal. If someone wants to refer it straight to the Planning Commission, we could, but there is no change.

Councilmember Kaneshiro: Therefore, it would be refer it to Committee and then do any amendments? We had a lot of discussion about looking at the island-wide, looking at the size, but I am not sure if that is the exact answer, but as far as the vetting process, I was not sure how we do it. Do we send it back and have them

do the conversation or we put it back in Committee and have the Planning Department tell us...I am open either way, but I would be more comfortable referring it somewhere and getting it a little more comfortable on it.

Council Chair Rapozo:

Councilmember Hooser.

Councilmember Hooser: I think the way it normally works is those Councilmembers that have issues with certain sections would suggest amendments to resolve those issues and then we would discuss and vote on them. If it needs to go back to the Planning Commission at that time, we would send it back at that time. Normally, I think the way the process works is you put a bill on the table, you either like it or you do not like it, if you want a bigger size, you propose a bigger size, if you want island-wide, you propose island-wide, and that keeps the discussion going. Otherwise, the Chair or somebody else has to figure out what everybody wants. I think it behooves individual Members to propose specific amendments, otherwise, we are grasping at straws trying to make everybody happy when we do not know what is going to make anybody happy.

Council Chair Rapozo: That is why I am suggesting that it goes back to the Committee where the amendments can be proposed. Councilmember Yukimura.

Councilmember Yukimura: I have often tried to listen at what people's concerns are and then offer amendments to address it. I am not clear, Councilmember Kaneshiro, what is making you feel uncomfortable?

Council Chair Rapozo: He is uncomfortable. We are not going to try and convince anybody...the question right now is what do you folks want to do. Do you want to kill it today or do you want to send it to the Committee. Those are the options we have today. I am suggesting that we keep it alive. It is not going to impact the effective date of this ordinance because of the five (5) month waiting. We can meet with the Planning Department before next week, so they can assist us with some amendments, get it to the County Attorney to make sure the amendments are legal, and those amendments can be introduced at next week's Committee Meeting. At the Committee Meeting, like what Councilmember Hooser said, if it crosses the threshold of having it to be reviewed by the Planning Commission, it will get sent over there, and you would hope that we would get that back within two (2) months--well, within the five (5) month period. I am with Councilmember Kuali'i, if in fact it does get vetted out and there is some compelling reason why this should not be an island-wide issue, I am inclined to support that at that time. I am inclined to support the bill for the Lihu'e area, but I do not believe we have vetted it out and I think we need to. We have an opportunity and it does not impact and I know people are going to take this and say, "The Councilmembers killed the opportunity." No, there is no opportunity killed because it will not take effect for five (5) months anyway. We are just trying to get more information from the Planning Department.

Councilmember Kuali'i: Procedurally what is the motion on the floor and would we have to remove that, if it was either to receive or approve? Do we need a motion to refer?

Council Chair Rapozo: If you want it to go back to the Committee, yes, it would be a motion to refer it to the Planning Committee.

Councilmember Yukimura: It has higher precedence than the main motion.

Councilmember Kualii: It would eliminate the other motion.

Councilmember Yukimura: It has higher precedence.

Councilmember Kualii moved to refer Bill No. 2627, Draft 2 as amended to Bill No. 2627, Draft 3 to the August 10, 2016 Planning Committee Meeting, seconded by Councilmember Kaneshiro.

Council Chair Rapozo: Any further discussion on that? Any public testimony? I know we have Ms. Kanna here.

There being no objections, the rules were suspended to take public testimony.

There being no one present to provide testimony, the meeting was called back to order, and proceeded as follows:

Councilmember Chock: Third time's the charm.

Council Chair Rapozo: Third time's the charm. With that, the motion is to refer it to the Planning Committee.

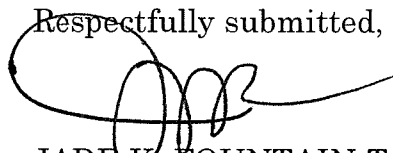
The motion to refer Bill No. 2627, Draft 2 as amended to Bill No. 2627, Draft 3 to the August 10, 2016 Planning Committee Meeting was then put, and unanimously carried.

Council Chair Rapozo: Motion carried. With that, that ends today's official proceedings. We will reconvene in the Executive Session room in five (5) minutes.

ADJOURNMENT.

There being no further business, the Council Meeting adjourned at 4:06 p.m.

Respectfully submitted,



JADE K. FOUNTAIN-TANIGAWA
County Clerk

:dmc

(August 3, 2016)

FLOOR AMENDMENT

Bill No. 2627, Draft 2, A Bill For An Ordinance To Amend Chapter 10, Kaua'i County Code 1987, As Amended, By Adding A New Article 5B, To Allow For Construction Of Additional Rental Units In The Lihu'e Planning District

Introduced By: ROSS KAGAWA

Amend Bill No. 2627, Draft 2, SECTION 2, as amended, to read as follows:

"SECTION 2. Chapter 10 of the Kaua'i County Code 1987, as amended, is hereby amended by adding a new Article 5B, to be appropriately designated and to read as follows:

"ARTICLE 5B. LĪHU'E COMMUNITY PLAN IMPLEMENTING ORDINANCE

Sec. 10-5B.1 Additional Rental Units.

(a) Definitions. When used in this Article, the following words or phrases shall have the meaning given in this Section unless it shall be apparent from the context that another meaning is intended.

(1) "Additional rental unit" means a rental unit that includes a separate kitchen, bedroom(s) and bathroom facilities, attached or detached from a dwelling unit that is used for the purpose of a long term rental unit. When built within an existing residential dwelling unit or attached to one, the two (2) units together shall constitute a multi-family dwelling.

(b) One additional rental unit may be located on a lot in the Residential R-4 and R-6 Zoning Districts in the Līhu'e District, subject to the following conditions:

(1) The maximum size of an additional rental unit shall be as follows:

Lot Area	Maximum Floor Area
5,000 to 7,499 sq. ft.	400 sq. ft.
7,500 sq. ft. or more	800 sq. ft.

(2) One (1) off-street parking space per additional rental unit shall be provided in addition to the required off-street parking for the primary dwelling unit.

(3) The subdivision of a lot that would separate the additional rental unit from the primary dwelling unit is prohibited.

(4) Neither the owner or owners, nor the heirs, successors or assigns of the owner or owners will submit the lot or any portion thereof to a condominium property regime under the provisions of Hawai'i Revised

Statutes (HRS) Chapter 514A to separate the ownership of an additional rental unit from the ownership of its primary dwelling unit;

(5) The additional rental unit shall be used only for long-term rental or otherwise occupied for periods of at least six (6) months, and shall not be used as a part of a homestay operation or transient vacation rental;

(6) The owner or owners of the lot shall record covenants running with the land with the bureau of conveyances or the land court of the State of Hawai'i, or both, as is appropriate, recording those standards set in subsection (b).

(c) Additional rental units are not permitted:

(1) On lots with a lot area of less than [3,500] 5,000 square feet;

(2) On lots that have more than one dwelling unit, including but not limited to, more than one (1) single-family dwelling unit, an additional dwelling unit, a guest house, a multi-family dwelling or dwellings, planned development housing, or group living facility. An existing additional dwelling unit or guest house may be converted into an additional rental unit but no additional dwelling unit or guest house may be constructed;

(3) On lots that do not have direct or driveway access to a State or County right-of-way that is at least twenty feet (20') in width.

(d) Prior to building permit review for an additional rental unit, the following public facilities shall be found adequate to service the additional rental unit:

(1) For sewerred areas, the availability and capability of a public sewer system shall be confirmed in writing by the Department of Public Works. The availability of a private sewer system or an individual wastewater system shall be confirmed in writing by the Department of Health.

(2) The availability of water, including, but not limited to source, transmission, and storage lines/facilities shall be confirmed in writing by the Department of Water.

(3) Approval in writing for an additional rental unit from the Fire Department shall be required.

(4) The lot must have direct access to a street that has an all-weather surface (asphalt or concrete) roadway pavement continuous to the major thoroughfare, or if the street does not have such all-weather surface at the time of application for a building permit, there exist funds specifically appropriated in the capital improvement budget ordinance for such roadway pavement. The Planning Director and County Engineer shall apply the standards and criteria for requiring road improvements established in the Subdivision Ordinance and the "Kaua'i County Planning Commission Road

Widening Policy” (as may be amended) for those roads considered substandard.

(e) The additional rental unit Facilities Clearance Form as prescribed by the Planning Director shall be completed prior to application for a building permit and shall be submitted with the building permit application. All requirements and conditions on the completed additional rental unit Facilities Clearance Form shall be met prior to issuance of a building permit based on legal requirements at the time of building permit issuance. The Planning Director shall certify the additional rental unit Facilities Clearance Form as complete only if every signature blank on the form has been signed by the respective department or agency, and the applicant has signed an affidavit prescribed by the Planning Director verifying that the applicant understands that completion of an additional rental unit Facilities Clearance Form does not guarantee or vest any right to a building permit, and that all conditions and requirements in existence at the time of building permit application shall be met before a building permit can be issued.

(f) The owner of a structure constructed without a building permit prior to the effective date of this ordinance, intending to convert that structure to an additional rental unit, shall obtain an after-the-fact zoning permit and building permit.

(g) Any permits for existing structures that can be converted into an additional rental unit shall not be required to pay an after-the-fact permit fee pursuant to Section 8-3.1(h), Kaua'i County Code 1987, as amended, provided the application is submitted to the Department of Planning within twelve (12) months of the adoption of this Ordinance.

(h) If an additional rental unit is found to be in violation of this Article, the owner shall be subject to those legal procedures and penalties established under Section 8-3.5.”

(Material to be deleted is bracketed. New material is underscored.)
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